

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

23 SEPTEMBER 2020

DAY 270



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 23 SEPTEMBER 2020

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Are we ready?

ADV PRETORIUS SC: Yes we are Chair.

CHAIRPERSON: Okay let us continue. Mr Mokoena you are still under the oath you took yesterday okay. Alright.

ADV PRETORIUS SC: Morning Mr Mokoena.

10 **MR MOKOENA:** Morning Advocate.

ADV PRETORIUS SC: You have your statement before you that is FS2; Bundle FS12 and we were at page 349.

MR MOKOENA: Sorry. I am sorry I have got it now.

ADV PRETORIUS SC: Okay. You will recall yesterday Mr Mokoena you gave evidence that at a stage and on the instructions of the National Minister the payments by way of advance payments to suppliers stopped.

MR MOKOENA: Correct Chair.

20 **ADV PRETORIUS SC:** Do you what the MEC Mr Zwane's attitude was to that direction of the Minister; the National Minister?

MR MOKOENA: Well in the meeting he was in agreement with that statement and I think he was saying that we are going to implement our undertaking that we were going stop.

ADV PRETORIUS SC: Well would you look at paragraph 29 please of your affidavit.

MR MOKOENA: But when we got home...

ADV PRETORIUS SC: Alright sorry I interrupted. Yes when you got home?

MR MOKOENA: But when we got home he came back to me and said no we are continuing we are not going to stop and that we will continue with our project up until the end of the financial year.

10 **ADV PRETORIUS SC:** Alright. Because overnight the legal team looked at the Open Waters Report.

MR MOKOENA: Okay.

ADV PRETORIUS SC: Do you know that Open Waters was an entity that was briefed to investigate by way of forensic audit the prepayments issue?

MR MOKOENA: I heard about that Chair.

ADV PRETORIUS SC: Their report says that payments did in fact continue by way of the cession payments. Did you know anything about that?

20 **CHAIRPERSON:** Did or did not?

ADV PRETORIUS SC: Did.

CHAIRPERSON: Oh okay.

MR MOKOENA: No I do not know about that because according to me and my recollection is that when we said we are coming home to stop we stopped that month end of

February because the meeting with the Minister was in February. Thank you Chair.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Alright we will look at – I will look at the detail of that and see what evidence there is in that report and we will put it before the Chair. But you say you know nothing about that.

MR MOKOENA: I know nothing about that.

ADV PRETORIUS SC: If you would go please to paragraph
10 34.

CHAIRPERSON: Before that how long after that meeting involving the National Minister was it when Mr Zwane came back to you and said the advance payments should continue?

MR MOKOENA: It was about fourteen days after.

CHAIRPERSON: Sorry?

MR MOKOENA: About fourteen days after.

CHAIRPERSON: About two weeks after.

MR MOKOENA: About two weeks after we came from the
20 meeting with the Minister.

CHAIRPERSON: Yes.

MR MOKOENA: Yes Chair.

CHAIRPERSON: Did – did he explain to you why he was changing his mind now about this issue?

MR MOKOENA: I asked him that as we took an

undertaking why now are you changing. He said that we still need to ensure that we spend within that time up until the end of the financial year. Okay well we can spend let us spend. So he was focussing more on spending and not on the commitment that we have made to the Minister.

CHAIRPERSON: Hm.

MR MOKOENA: Therefore, I thought that that was incorrect to undermine what you have agreed on and then you come back without even informing the parties that you
10 are with that you are changing your stand now.

CHAIRPERSON: Hm.

MR MOKOENA: Because changing a stand for me would not have been in good principle.

CHAIRPERSON: Hm. But that same issue that he was raising that there was a need to spend money that was something that he – he knew and I am – I am almost sure he had initially expressed at the meeting with the National Minister. Namely that he thought there was a need to – or
20 for the – for the payments to continue. He had raised that issue with the National Minister at the meeting but ultimately the National Minister wanted to hear nothing of it.

MR MOKOENA: Correct Chair.

CHAIRPERSON: And your meeting with him when he – he said that the payments should continue how did it end?

MR MOKOENA: It ended on a sour note because...

CHAIRPERSON: Yes.

MR MOKOENA: I told him that I will not sign anything beyond that.

CHAIRPERSON: Yes.

MR MOKOENA: Which must advance money to material suppliers anymore after the end of February 2011.

CHAIRPERSON: Yes. Did he indicate what he was going to do next now that you were not prepared to sign further
10 payments?

MR MOKOENA: Not that I can recall Chairperson.

CHAIRPERSON: Yes. At that stage were you no longer scared that he would say you must submit your resignation letter?

MR MOKOENA: At that stage he was not talking about the resignation letter anymore.

CHAIRPERSON: He was not talking about it?

MR MOKOENA: Yes since after the meeting with the National Minister.

20 **CHAIRPERSON:** Yes.

MR MOKOENA: He never spoke about that resignation letter anymore.

CHAIRPERSON: Yes. But he was unhappy that you were not prepared to authorise further payments?

MR MOKOENA: Correct Chair.

CHAIRPERSON: Okay. Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. In paragraph 29 if we could just go back you put on record some of your suspicions but as with former evidence that you gave yesterday I understand you have no facts really to back up your suspicions in paragraph 29?

MR MOKOENA: That is correct.

ADV PRETORIUS SC: Alright let us go to paragraph 34. When you left as Head of Department you were replaced it
10 is common cause by Mr Mokhesi.

MR MOKOENA: That is correct Chair.

ADV PRETORIUS SC: And were you involved then in the preparation for the disciplinary hearings that we have been told about?

MR MOKOENA: No I was not Chairperson.

ADV PRETORIUS SC: Did you testify at those disciplinary hearings?

MR MOKOENA: Yes I did.

ADV PRETORIUS SC: Right. Do you know why certain
20 people were selected for discipline and other were not? First of all who did the selection?

MR MOKOENA: I cannot answer confidently because I was not working at the department at that stage therefore, I do not know who is the person who selected the persons that were proposed to go to the hearing or disciplinary hearing.

ADV PRETORIUS SC: But who was ultimately disciplined and dismissed?

MR MOKOENA: I think there were six former colleagues. It was Me Manike Mogele and Dada Kaizer Maxatshwa and Dada Kabelo Koloi, Dada Loyiso Ndenze, Dada Twale and MinaguNgufa Magaute who is now deceased.

ADV PRETORIUS SC: At the time of the disciplinary hearings where were you employed?

MR MOKOENA: At that time I was employed at Mangaung
10 Metropolitan Municipality as the Head of Department for Human Settlements.

ADV PRETORIUS SC: Right. Do you know a person Rochelle Ells?

MR MOKOENA: Yes I do Chair.

ADV PRETORIUS SC: Did she construct houses?

MR MOKOENA: That is correct.

ADV PRETORIUS SC: And did she get contracts from the Department Free State?

MR MOKOENA: That is correct.

20 **ADV PRETORIUS SC:** Did the MEC Mr Zwane ever tell you anything about that particular contractor and her relationship with the Premier?

MR MOKOENA: Correct Chair.

ADV PRETORIUS SC: What did he tell you?

MR MOKOENA: He told me that we must ensure that this

contractor gets contract to build houses in Kroonstad because that is an instruction from the Premier. And when the projects had started running when time comes for the claims to be submitted he would come and tell me that we must expedite the claims because the Premier wants to be – that claims to be expedited.

CHAIRPERSON: So would that be Mr Zwane coming to you when claims had been logged, he would come and say you must expedite Ms Rochelle Ells' claims because the
10 Premier has said they should be expedited?

MR MOKOENA: That is correct Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: A narrative Mr Mokoena that you have put before the Chair yesterday and today involves a member of the Provincial Cabinet. Involved the National Treasury and the National Minister and you have spoken about several meetings at which senior officials were in attendance. You would have to say yes a bit louder.

MR MOKOENA: Correct Chair.

20 **ADV PRETORIUS SC:** It is difficult to conceive then that all this happened within a bubble and no-one else within the Province knew what was happening. Do you understand the point I am making?

MR MOKOENA: No Chair.

ADV PRETORIUS SC: No. The members of the Provincial

Cabinet.

MR MOKOENA: Yes.

ADV PRETORIUS SC: It is probable just on the face of it and I would like to explore this with you that other people in the Cabinet would have known as well.

MR MOKOENA: That is correct. Now I understand.

ADV PRETORIUS SC: Alright. What do you know about that?

MR MOKOENA: I think in the meeting of the EXCO it was
10 raised by the National Treasury in one meeting that these materials – advance material scheme is not correct and that is money already that has been deposited from our account into the accounts of the material suppliers and that was in a meeting of the EXCO when it was raised.

ADV PRETORIUS SC: EXCO what body is that?

MR MOKOENA: EXCO is the Executive Cabinet Meeting of the MEC's with the Premier.

ADV PRETORIUS SC: Right. So as far as you were aware
20 the EXCO at least would have known about the issues to which you have testified. At least at a general level.

MR MOKOENA: Correct Chair.

ADV PRETORIUS SC: And they would have known about the financial implications that were raised by National Treasury?

MR MOKOENA: Correct Chair.

ADV PRETORIUS SC: And that matter was discussed?

MR MOKOENA: That matter was discussed.

ADV PRETORIUS SC: Were you at that meeting?

MR MOKOENA: I was at that meeting.

ADV PRETORIUS SC: What was the Premier's attitude to what was happening?

MR MOKOENA: She did not come up with what – what can I say – a conclusive detailed decision about what to do about it – about that item as it was discussed. And I think
10 the person came especially for that from the National Department of Treasury to come and inform the EXCO in that meeting on the day.

ADV PRETORIUS SC: Alright. Who was on the EXCO can you just give us as much as you can remember?

MR MOKOENA: I think all members of EXCO and they are all MEC's. All Heads of Departments I think were there. CFO's as well yes.

ADV PRETORIUS SC: And was the Premier?

MR MOKOENA: And the Premier who was there was
20 chairing the meeting.

ADV PRETORIUS SC: Yes who was the Premier?

MR MOKOENA: The Premier was Mr Magashule.

ADV PRETORIUS SC: Now there would obviously be minutes of EXCO meetings?

MR MOKOENA: That is correct.

ADV PRETORIUS SC: Would this matter have been reported on Cabinet at Cabinet level – Provincial Cabinet level?

MR MOKOENA: This matter should have been reported there I agree.

ADV PRETORIUS SC: Alright. And there would be minutes of those meetings?

MR MOKOENA: There would also be minutes of those meetings as well.

10 **ADV PRETORIUS SC:** Would you in your capacity as HOD have submitted reports to the MEC, to EXCO or to the Provincial Cabinet?

MR MOKOENA: Yes if there were items that we wanted to be discussed and agreed upon we would write our own memo, submit to the EXCO as a report or as a memo and then it would be discussed at that level and be approved or disapproved at that level.

ADV PRETORIUS SC: Did you write reports at this time?

MR MOKOENA: On this matter no.

20 **ADV PRETORIUS SC:** No?

MR MOKOENA: No.

ADV PRETORIUS SC: Any reason for that important matter?

MR MOKOENA: Important matter yes but it was – as it was raised by the National Department in the meeting it

ended up there. They did not focus [00:15:34].

ADV PRETORIUS SC: You say there was no need for you to do so?

MR MOKOENA: I think it did not come to my mind that I should write a report about it.

ADV PRETORIUS SC: Well when this matter came up before the EXCO that you have now described at that meeting that you have now described was there no instruction that came from EXCO sort this matter out as a
10 matter of urgency?

MR MOKOENA: I cannot recollect any decision taken which was tasking me to make a report on that matter.

ADV PRETORIUS SC: Anyway, I understand that all reports made to EXCO, the Cabinet, the Premier minutes of all relevant meetings will be a matter of record and those records should be at the offices of the Province in Bloemfontein?

MR MOKOENA: That is correct Chair.

ADV PRETORIUS SC: Are there any other documents that
20 you can think of that would record the events of 2010/2011 in relation to the evidence you have given?

MR MOKOENA: I think the most confidential document for me that I think could help us with information is the report from the BAS B-A-S the system that captures and records all the transactions of all the material that we have

supplied. How much did we pay out? To which contractor? When? And the – it must also show the – the bank account of where the money went. So that is why I was proposing that if we could get from the National Treasury the record of December 2010 and December 2011 surely from there, we can pick up all the contractors and all the material suppliers that we have supplied.

ADV PRETORIUS SC: And this information is BAS; B-A-S?

MR MOKOENA: This information comes out of the BAS
10 system.

ADV PRETORIUS SC: And that is the financial system where all payments are recorded?

MR MOKOENA: That is correct.

ADV PRETORIUS SC: Including of Provinces?

MR MOKOENA: That is correct.

ADV PRETORIUS SC: And it resides with National Treasury you say?

MR MOKOENA: And it resides with National Treasury Chair.

20 **CHAIRPERSON:** After Mr Zwane had proposed his “solution” in quotes for the problem that the Department was facing in relation to this matter namely failing to spend the money that it had been allocated for low cost housing do you know whether there was a report that he – a written report that he may have submitted to the Executive Council

the Provincial Cabinet or to the Premier which would have set out what the solution is and what was going to be done? Whether it is a report or a memo do you know whether there was such a document?

MR MOKOENA: Chair in as far as I can recall no document was written in that direction.

CHAIRPERSON: Yes. You cannot remember.

MR MOKOENA: To the Cabinet.

CHAIRPERSON: Okay.

10 **MR MOKOENA:** Yes Chair.

CHAIRPERSON: Alright.

ADV PRETORIUS SC: We have heard of the quote “solution” unquote that was proposed and implemented in order to ensure that money was spent before the year end and the budgetary allocation was not lost and principally, we have heard about the prepayments made to suppliers.

MR MOKOENA: That is correct.

ADV PRETORIUS SC: And we have also heard about money paid to suppliers for onward transmission to the
20 contractors, do you know about that? The so called bridging finance payments.

MR MOKOENA: No – I am not aware of that one. Bridging finance.

ADV PRETORIUS SC: Well there is evidence and it has been confirmed that some of the money paid to suppliers

was transmitted onwards sometimes in cash to contractors.

Do you know anything about that?

MR MOKOENA: No I do not know anything of that.

ADV PRETORIUS SC: You sure?

MR MOKOENA: Because for me the money that was sent to – into the accounts of the material suppliers was just for materials and could not be bridging finance.

ADV PRETORIUS SC: No of course it could not but notwithstanding that money was nevertheless paid.

10 **MR MOKOENA:** Then it was out of my control then it was not brought to my attention.

ADV PRETORIUS SC: Alright but that is – those findings are on record and they have been confirmed. Do you know anything – do you understand what a right of retention is?

MR MOKOENA: No I do not understand.

ADV PRETORIUS SC: Alright so in the contract that is entered into between the Department and the contractor, the builder the Department negotiates for and contracts for a right of retention. In other words, it withholds money
20 that ought to be paid to the contractor as a type of insurance policy so that if there are any defects the work is not complete or the work is not properly done there is money that can be drawn on to meet the financial deficit that arises. Do you know anything about that?

MR MOKOENA: That is the retention.

ADV PRETORIUS SC: Right of retention yes.

MR MOKOENA: Yes.

ADV PRETORIUS SC: You know that?

MR MOKOENA: Yes I know that.

ADV PRETORIUS SC: That type of clause in a building contract?

MR MOKOENA: Correct Chair.

ADV PRETORIUS SC: What happened and this was found to be the case in the disciplinary inquiry is that these
10 rights of retention were abandoned and the retention money was paid over to the contractors thus ensuring even more money was paid out even more quickly. Do you know anything about that?

MR MOKOENA: No I do not know about that.

ADV PRETORIUS SC: So that would have happened without your knowledge?

MR MOKOENA: If the retention is paid before the product is completed.

ADV PRETORIUS SC: Yes.

20 **MR MOKOENA:** Then that would have been incorrect. I would not have agreed to that.

ADV PRETORIUS SC: Or even paid before the time came for payment before defects in the building would appear and before the time for payment of the retention money over had occurred. In other words, a premature payment

to ensure that money was spent.

MR MOKOENA: No. I think in the recovery plan we did not have something like that to say that now because we are literally pushing to spend we now have to spend it in the money that is supposed to be retained for the project. I think that could not have been agreed upon.

ADV PRETORIUS SC: Well it could not – it might not have been agreed upon but there is evidence in the disciplinary inquiry that it actually happened.

10 **MR MOKOENA:** That it happened. I have no knowledge of that Chairperson.

ADV PRETORIUS SC: You have given evidence about the MEC's involvement in the selection of contractors. Did the same principle apply to the selection of suppliers?

MR MOKOENA: No not on suppliers it was only on contractors Chairperson.

ADV PRETORIUS SC: Do you know of the War Room meetings?

MR MOKOENA: Yes I know.

20 **ADV PRETORIUS SC:** Did you attend the War Room meeting

MR MOKOENA: I did attend some of them.

ADV PRETORIUS SC: What were these meetings?

MR MOKOENA: These meetings were like project office where we gather information about our projects. What – at

what stage are we with different projects and from there we would record that and then we follow up where we think that there are problems that need us to unlock then we go there and unlock. Say for instance there is a problem at a Municipality level which blocks this project from moving then we will task one person to go to that Municipality and talk to them so that that problem can be solved.

ADV PRETORIUS SC: Did these War Room meetings monitor the implementation of the early payment or
10 advance payment scheme?

MR MOKOENA: No it is before that.

ADV PRETORIUS SC: Sorry?

MR MOKOENA: The War Room came before that.

ADV PRETORIUS SC: Yes but at a stage the War Room meetings also monitored the – the early payment scheme.

MR MOKOENA: Correct at a later stage.

ADV PRETORIUS SC: At a later stage. If you would bear with me Chair I would just like to get a reference to put to – you have given evidence about Mr Tsoametsi.

20 **MR MOKOENA:** That is correct Chair.

ADV PRETORIUS SC: He certainly on the evidence that we have heard played a role in the devising and implementation of the scheme – the early payment scheme – the advance payment scheme.

MR MOKOENA: That is correct Chair.

ADV PRETORIUS SC: Do you know why he was not disciplined?

MR MOKOENA: No I do not know why because I was now working at the Municipality in Mangaung I was not in the Department any longer.

ADV PRETORIUS SC: Did you ever report to anybody other than Mr Zwane about your dissatisfaction and opposition to the advance payment scheme?

MR MOKOENA: Chair no.

10 **ADV PRETORIUS SC:** You did not think it apposite to report to the Premier in that regard?

MR MOKOENA: I was still coming there.

ADV PRETORIUS SC: Alright.

MR MOKOENA: No I did not talk to anyone else because I thought – what came to my mind was that I should talk to someone who was going to advise me and then I thought that looking at the situation the Premier will be a better person because the Premier is also a boss to my MEC. Then that is the person I tried to get hold of same day
20 when we came from the meeting in the office of the MEC. After that meeting when I realised that we are at loggerheads with MEC then I went down to the office of the Premier just to check when it was possible for me to meet him. And it was unfortunately not possible. And then after I was there I went again stood in the queue there waiting

for him up until nine in the evening the queue was still long then he said – they said we must come the following day. So it continued days after days – a week – second week and then I stopped following it – pursuing it. Because I thought that was the relevant person to help me out of this.

ADV PRETORIUS SC: Chair I am just dealing with notes given to me by the legal team if you would bear with me?

CHAIRPERSON: That is fine. So Mr Mokoena the housing units that were meant to be built in 2010/2011 financial
10 year is the position that to date they have not been built or have they since been built after you had left?

MR MOKOENA: I am not sure Chair because what we tried to do was to agree with National to come and help us so that we could turn as much as possible from the amount of money and the materials into units. And when I left National was still there. Was still working very close with our colleagues especially in the War Room. So my understanding is that by the time I left most of those – some of those units should have – could have been built
20 but not most.

ADV PRETORIUS SC: If you would look please at para 59 on page 113 of Bundle FS14. That is a different bundle.

MR MOKOENA: Not this one?

ADV PRETORIUS SC: Ja not that one. Bundle FS14 behind you.

MR MOKOENA: Number?

ADV PRETORIUS SC: Page 113. If you can look at paragraph 59, please.

MR MOKOENA: 59?

ADV PRETORIUS SC: Yes.

MR MOKOENA: Yes.

ADV PRETORIUS SC: Just take a minute to read it, please.

MR MOKOENA: [No audible reply]

ADV PRETORIUS SC: In essence, what is said in the
10 affidavit of Mr Mokhesi in the review application is that:

“Mr Maxatshwa returned to Bloemfontein having attended a meeting. Advised the then head of the department (that is yourself), but that the department (your department) had been warned not to implement the expenditure recovery plan. However, Mr Mokoena instructed Mr Maxatshwa to proceed with the plan.”

And that was found in the disciplinary hearing. What do you say about that?

20 **MR MOKOENA:** I think, that is not correct. Why I say it is incorrect is because when Mr Maxatshwa went to that meeting, he went on our behalf. He knew already that the MEC had already said you are not to move away or you not refrain from implementing this project.

So here, my understanding is that, it looks like I am the

one who is pushing for these projects to continue. It is not the MEC. So I disagree with it.

ADV PRETORIUS SC: Right. He does explain over the page on page 114 that the instruction that he is referring to is the memorandum prepared by Mr Tsoametsi and signed by him and yourself on the 25th of November. You have given evidence about the circumstances of that memorandum.

MR MOKOENA: Thank you, Chair. I think, this narrative is a narrative I had always when I was witnessing at the
10 hearing, the disciplinary hearing. It is an incorrect narrative. It takes the logic and puts it on his head.

We know that the origin of the scheme that we had a meeting in the MEC's office. The instruction to Mr Tsoametsi to prepare a document came from that meeting.

Now for me today to come and say a different version here that I am the one who instructed Mr Tsoametsi to write this internal document, linked the instruction to Mr Maxatshwa.

I think here the logic is not linking. That is why I am
20 saying that the logic is standing on its head here. Thank you, Chair.

ADV PRETORIUS SC: When the employers who were ultimately dismissed, were first suspended, were you still in the office?

MR MOKOENA: No, Chair. I was out of office at that stage.

ADV PRETORIUS SC: Just bear with me a moment.

MR MOKOENA: [No audible reply]

ADV PRETORIUS SC: The findings, and you can look at FS19 if you want to check. I am going to read it to you anyway. At page 757 for the record. The findings of the disciplinary inquiry deal with the retention clause, non-enforcement or abandonment.

And in paragraph 396 of the disciplinary findings, it reads... Refer to a paragraph of the ERP which we are
10 looking for but it is not at hand at the moment. It is recorded that:

“It was decided that the retention clause be retained in the contract but not be enforced these projects to ensure expenditure and cash flow for the contractor”.

So in order to ensure that the contractor receive money but also to ensure that the department spend as much money as possible, that retention clause was abandoned. I just wanted to put that before you. You still do not have any
20 knowledge of that?

MR MOKOENA: I still do not have any knowledge of it Chairperson.

ADV PRETORIUS SC: Do you have anything to add to your evidence that I perhaps have not asked you and you wish to place before the Chair?

MR MOKOENA: From my affidavit, I think we have covered all the areas of importance that I requested that they be covered as part of my evidence.

ADV PRETORIUS SC: Thank you. Thank you, Chair.

CHAIRPERSON: What would you say if somebody comes before the Commission Mr Mokoena and say you have downplayed your role in this matter and that you were a much more active role player than you seem to want everybody to believe? What would your response be to that?

10 **MR MOKOENA:** Thank you, Chair. I think the first thing would be. The second point of...[intervenes]

CHAIRPERSON: And I am talking especially with special reference to ...[intervenes]

MR MOKOENA: My signing of the two documents?

CHAIRPERSON: ...Mr Zwane's "solution" and that you were much more active, at least, maybe from a certain stage onwards than you may be making it out to be.

MR MOKOENA: Chair, I think the starting point for me would be that I disagree with that version.

20 **CHAIRPERSON:** H'm?

MR MOKOENA: And that the origin of this scheme came with the MEC as advised.

CHAIRPERSON: H'm?

MR MOKOENA: So if it was not him being advised as whereby the person and the source that he never wanted to

disclose to me, then I would have said that I was actively involved.

CHAIRPERSON: H'm?

MR MOKOENA: Because I am the person who were supposed to work very close with him and advise him about Human Settlement issues.

CHAIRPERSON: H'm?

MR MOKOENA: Because I have been in the business for more years than he was.

10 **CHAIRPERSON**: H'm, h'm.

MR MOKOENA: That is my starting point. My second point is that, when it was already been detected that we are doing wrong about this scheme, still when you come back from there, he wants us to continue. Then if I am with him, I would have said no in February to stop the scheme or the implementation for the scheme.

CHAIRPERSON: H'm, h'm.

MR MOKOENA: And then three. The research that was done, it is because I am the one who said that this scheme is
20 bordering on illegally. Therefore, we cannot implement it. So that is why he instructed Mr Tsoametsi.

So it is not me who instructed Mr Tsoametsi. So on those three key points, I am still saying that my evidence is that it looks like here I was corralled into a corner with a plan that was well-orchestrated beforehand.

And for me getting to that meeting, it was me getting into a trap and I think I was on top of the trap. Realising in the meeting that everyone else was not speaking.

So that quietness was quite uncomfortable for me, especially coming from the CFO who should be supporting me in the meeting because I am arguing in terms of the procurement procedures.

She should have come in and said, I am right. Can you not see this is not possible? This is wrong. This cannot
10 happen. But she was quiet, sitting there. And all the other colleagues were quiet.

So on that note, I would therefore say, if it was... if I had power, I would have said that maybe I am not the only person who finds himself in these circumstances.

I would recommend that there must be some kind of a... I do not know how to put it now. Administrative truth(?) for an avenue which was available to each and every official, each and every manager when you are in the circumstance where I was forced to do things that you feel like this is
20 illegal.

Then you can touch a button or you can submit your, what I would call, an intervention request. If you could have something like that, I think we can save South Africa a lot of money because I think in practise it is also the same problem. In other department of the province I think the

same problem. So that could help.

I am just trying to think out loud now that if we could have a platform or a structure that is in the presidency because I think that is the highest office.

And that in that structure, we must serve people who is competent in terms of procurement, in terms of legal, in terms of communication, and in terms of investigations.

So that if you submit your intervention request, they can respond quickly and then bring the two parties to validate
10 whether it is true or not. And then they can take action at that time.

But this structure must not just look at serving this problem that I am putting here. I think it must have at least three focus areas.

One, it must be stop from the source, the instructions and the writing of documents. Two, it must also look at how to professionalise the whistle-blowing programme.

Because there is a whistle-blowing programme there but it is stuck in delays in the terms of bureaucracy. And then
20 three, also to ensure that we bring that close and professionalise the last audit initiative.

If they can bring those three things together, that will help us a lot. And the wasteful expenditure that we are having, it can be stopped by it because you are strangulating the fruitless activity right from the start where the

instructions come.

Because the source is the instruction. Someone instructs the other person to do... to give some examples. He or she is not signing a petition.

I am not party to the procurement processes but already upstream, you have already conditioned this project how to role(?). So I think that the problem is also the manager of the... So that is what I propose Chairperson.

CHAIRPERSON: You mentioned in your evidence, at least
10 three contractors, I think you said that Mr Zwane seemed to be interested in. Those were the ones, I think you said, he would approach you and ask you to expedite their payments. Is that right?

MR MOKOENA: That is correct, Chair.

CHAIRPERSON: Yes. As after you had left, do you know if those contractors still exist or is that something that you do not know?

MR MOKOENA: No, I am not sure about that Chairperson.

CHAIRPERSON: You are not sure. Okay.

20 **MR MOKOENA:** Because by the time that I left the office, I did not even take anything in my office. I left all the files and everything.

CHAIRPERSON: Yes.

MR MOKOENA: Because I knew that all those the files are the property of the department.

CHAIRPERSON: Ja, ja.

MR MOKOENA: And I was going just across the street.

CHAIRPERSON: Yes.

MR MOKOENA: To throw away.

CHAIRPERSON: Ja.

MR MOKOENA: They will not have me on anything. I would have come back and talk to them.

CHAIRPERSON: Yes. Now, Mr Pretorius mentioned that there are indications that payments may have continued after
10 your meeting with the MEC and the National Minister. You said you do not know that because you said that you have taken the position there should be no further payments. Do you remember that?

MR MOKOENA: Correct, Chairperson.

CHAIRPERSON: Is there a possibility that payments may have happened without your knowledge, without your authorisation? Is there such a practical possibility that maybe somebody else, other people within the department may have continued to authorise payments without your
20 knowledge?

MR MOKOENA: It is possible Chair.

CHAIRPERSON: It is possible?

MR MOKOENA: Possible.

CHAIRPERSON: The payment processed did not... did not always have to come to your attention?

MR MOKOENA: That is true.

CHAIRPERSON: H'm. But would you not have told everybody concerned after your meeting with the National Minister and the MEC that there should be no further advance payments anymore?

MR MOKOENA: We had a meeting that is announced that as we come back from the minister, the feedback is that we must stop this project.

CHAIRPERSON: Yes.

10 **MR MOKOENA**: We must not do this again, nor other new transactions must go to suppliers. No new contract.

CHAIRPERSON: Yes.

MR MOKOENA: Yes.

CHAIRPERSON: So if anybody authorised them after that, then they would have done so knowing that you had issued an instruction to say there should be no further payments?

MR MOKOENA: That is correct, Chair.

CHAIRPERSON: Now, are you able to say that the MEC, Mr Zwane, definitely knew that his scheme was illegal or was
20 requiring the department to do something illegal? Or is the position that you believe that in his view that it was legal? Or are you able to say he may have say it was illegal but he knew it was illegal? What is your position?

MR MOKOENA: My position is that he knew it was illegal.

CHAIRPERSON: Yes.

MR MOKOENA: Because the first time when he mentioned it, I responded and I told him that it was illegal.

CHAIRPERSON: Yes.

MR MOKOENA: So he tried ways to ensure that he convinces me about the legality of the scheme.

CHAIRPERSON: Ja, yes.

MR MOKOENA: So for me, then it shows that he knew. And the mere fact that he did not want to inform us about who is the person who advised him.

10 **CHAIRPERSON:** Ja?

MR MOKOENA: Then there is something that he is hiding from us.

CHAIRPERSON: Yes.

MR MOKOENA: Yes, Chairperson.

CHAIRPERSON: Did he... what were the reasons that you told him as to why his scheme was illegal? What did you say to him in terms of A, B, C, D? It is illegal because of this and this and that. Just repeat that to me.

20 **MR MOKOENA:** I told him that it was illegal because it was illegal because one, the services is in government. Yes, you get the service first as the government before you pay. So this scheme is the very opposite to that. So this is illegal.

And also, number two is that, we do not have the capacity within the department. We are still a young department. We cannot be able to run all those things

including what we were doing in the office at that stage.

And then I think, also finally I said, in terms of the supply management from the procurement point of view, it was incorrect. It will come with this of a scheme. It will not help us at all.

CHAIRPERSON: Did he counter your reasons for saying his scheme was illegal with anything? In other words, did he engage your reasons to say but your reasons for saying the scheme is illegal are not sound because of A, B, C, D?

10 **MR MOKOENA**: He did not engage my contact.

CHAIRPERSON: H'm?

MR MOKOENA: What he engaged was the form, the outside part.

CHAIRPERSON: H'm?

MR MOKOENA: He said that this advice... he has been advised, he was advised by the person who is knowledgeable. He is an expert now. So I wanted to know, who is this expert?

CHAIRPERSON: But he never disclosed?

20 **MR MOKOENA**: And he never disclosed.

CHAIRPERSON: Yes.

MR MOKOENA: And the second thing that he looked at then was, because he realised, I was not moving, I was adamant. Then he said, let us be... because we know that this is happening in other provinces.

CHAIRPERSON: H'm. If he comes here and says: I never said... I would never have said a scheme should be carried out that I knew to be illegal. I was the MEC. I had taken an oath to uphold the constitution and the law. What Mr Mokoena is saying is not true. I do genuinely believe that this scheme was legal. What would you say?

MR MOKOENA: Chair, I would say that what made him to ask Mr Tsoametsi to go and do a research?

CHAIRPERSON: H'm, h'm. And you say the document that
10 ...[intervenes]

MR MOKOENA: The document did not ...[intervenes]

CHAIRPERSON: ...was not... did not talk to legality.

MR MOKOENA: The legalities, yes.

CHAIRPERSON: Yes.

MR MOKOENA: Yes, Chair.

CHAIRPERSON: Okay alright.

ADV PRETORIUS SC: Chair, arising out of these questions, may I just put one or two more?

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC**: The evidence of Mr Mokhesi says that he had difficulty in understanding or obtaining information in regard to what had happened prior to him taking office in 2010/2011. Did he ever ask for your cooperation?

MR MOKOENA: No, Chairperson.

ADV PRETORIUS SC: Did anybody actually come to you and say: Please explain to us what had happened?

MR MOKOENA: Is the first time today anyone else to discuss this matter, today.

ADV PRETORIUS SC: Really?

MR MOKOENA: Since I left the office December 2011, no one has ever come to me to discuss, investigate, interview or discuss with me this matter.

ADV PRETORIUS SC: Did you give evidence at the inquiry?

10 **MR MOKOENA:** [No audible reply]

ADV PRETORIUS SC: Were you asked to give evidence at the disciplinary inquiry?

MR MOKOENA: At the disciplinary inquiry I was a witness.

ADV PRETORIUS SC: Yes.

MR MOKOENA: Yes.

ADV PRETORIUS SC: Now in preparation for that, who spoke to you?

MR MOKOENA: For that meeting?

ADV PRETORIUS SC: Yes.

20 **MR MOKOENA:** I was just told that I must come to a meeting. I was not briefed properly. I was not given documents. It was just that I must come there and be part of the disciplinary hearings.

ADV PRETORIUS SC: No one sat with you and said: Look, we want to know what you know. Let us go through the

details.

MR MOKOENA: The secretariat, the lawyer that were running this, were the people who came to me.

ADV PRETORIUS SC: And did they brief you beforehand?

MR MOKOENA: They briefed me a day or two before the hearing.

ADV PRETORIUS SC: You understand that as the head of the department, you are the accounting officer and you are therefore responsible in terms of the PFMA, Public Finance
10 Management Act, for what happens under your command?

MR MOKOENA: That is correct.

ADV PRETORIUS SC: And even if you do delegate, you are still accountable.

MR MOKOENA: That is correct.

ADV PRETORIUS SC: Now, what is puzzling about the events of 2010/2011 and your department, is that there seems to be a blurring of the lines between your role and the role of the MEC.

How do you understand the distinction or the riding line
20 between your function and responsibility on the one hand and that of the MEC on the other?

Because you have given evidence to a great extent of what would seem to be a blurring of the lines of the MEC entering onto your domain. Please share your thoughts with the Chair.

MR MOKOENA: Thank you, sir. I think mainly, I felt strangulated because for me, they exert with authority at that particular point. And most of the thing that he was meddling in for me, are the things or the areas of work that belongs to me as the head of the department.

I think it was a deliberate ploy to unsettle me so that when he comes to me with instructions that I must take, it must be instructions that come from him and when it is me who according to the PMFA who is responsible but I am
10 referring to the things that he is bringing into my area of work.

I think he was doing this deliberately. He was aware that he was getting to the... he was getting insight into the environment view which did not belong to him.

ADV PRETORIUS SC: What is the environment of an MEC as opposed to your environment? What is the dividing line? Can you describe it briefly for us?

MR MOKOENA: Well, mainly, the MEC will come with regulatory and the HOD will come the implementation. When
20 I talk pageants, it is only the HOD that would talk pageants. When I talk supply chain management procurement, it is the HOD.

When I talk management of staff, it is the HOD. So he was into all those areas and he I think he was doing it deliberately. And I think he was being advised from

somewhere.

ADV PRETORIUS SC: Finally, Mr Mokoena. You gave evidence yesterday in relation to the ERP plan. There is the slide presentation, the summary of the ERP plan.

MR MOKOENA: Correct, sir.

ADV PRETORIUS SC: And you spoke expressly to the Chair about the cash flow projection document. Do you recall that cash flow projection document?

MR MOKOENA: I recall it.

10 **ADV PRETORIUS SC:** Would Mr Zwane had been aware of that?

MR MOKOENA: I think because it was an ERP, we would have taken him through it because we wanted him to know what it is that we are trying to achieve.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: Okay thank you very much Mr Mokoena for coming to give evidence. If needs be, we will ask you to come back but thank you very much. You are excused for now.

20 **MR MOKOENA:** Thanks very much Chair.

CHAIRPERSON: Thank you. We are at two minutes to eleven. But if your next witness is ready, we can start but if you need some time.

ADV PRETORIUS SC: Perhaps we should allow the time for the Jo'burg. Could we take an early short adjournment?

CHAIRPERSON: Okay alright. Shall we just make it our tea adjournment or...? Shall we make it our tea adjournment already?

ADV PRETORIUS SC: If you are happy with that Chair, yes.

CHAIRPERSON: From your side?

ADV PRETORIUS SC: Yes, it will give chance to do the handover.

CHAIRPERSON: Yes. Shall we say we resume at quarter past or shall I give you more time?

10 **ADV PRETORIUS SC**: Twenty past? Would that be ...[intervenes]

CHAIRPERSON: Twenty past.

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: Okay alright. We will resume at twenty-past eleven then.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON**: Are you ready, Mr Pretorius.

ADV PRETORIUS SC: Yes, thank you, Chair. The next witness is Mr Mphikelei Kaizer Maxatshwa. He is legally represented. May his representative place himself on record?

CHAIRPERSON: Yes.

ADV PIERRE MALAN: [indistinct –speaking off mic] my surname and Mr Kabelo Koloï who has also deposed to an affidavit in these proceedings. Thank you.

CHAIRPERSON: Okay, thank you.

CHAIRPERSON: Yes, Mr Pretorius, do you want him to be sworn in?

ADV PRETORIUS SC: Yes please, Chair.

CHAIRPERSON: Okay, please administer the oath affirmation.

10 **REGISTRAR:** Please state your full names for the record.

MR PHIKELEI KAIZER MAXATSHWA: My name is Mphikelei Kaizer Maxatshwa.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR MAXATSHWA: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR MAXATSHWA: Yes.

20 **REGISTRAR:** Do you swear that the evidence you will give will be the truth, the whole truth and nothing else but the truth? If so, please raise your right hand and say so help me God.

MR MAXATSHWA: So help me God.

CHAIRPERSON: Thank you, you may be seated. Continue, Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. Mr Maxatshwa would you look at bundle FS12 at page 183? We are referring to the black numbers in the top left hand corner of that bundle before you.

MR MAXATSHWA: I see, Chair, my document is starting at 184.

CHAIRPERSON: Okay, they will assist you.

ADV PRETORIUS SC: Chair, would you just bear with us a minute? Apparently, we have yet another bungling issue
10 to deal with.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: I did try and check some but 20 000 pages was a bit beyond us. Is that document in front of you now, sir?

MR MAXATSHWA: Thank you, Mr Pretorius, I have now – on page 183.

ADV PRETORIUS SC: Yes and if you go through to page 212, you will a signature on that page.

MR MAXATSHWA: Yes I am on 212.

20 **ADV PRETORIUS SC:** Whose signature is that?

MR MAXATSHWA: It is my signature.

ADV PRETORIUS SC: Right, this document from page 183 to 212, is that your affidavit prepared for the Commission?

MR MAXATSHWA: Yes, Mr Pretorius.

ADV PRETORIUS SC: As far as you are aware are the contents of this affidavit true and correct?

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: So the exhibit number is EXHIBIT UU2. May that be admitted?

CHAIRPERSON: The affidavit of Mr Mphikelei Kaizer Maxatshwa starting at page 183 is admitted and will be marked as EXHIBIT UU – did you say 2, Mr...?

ADV PRETORIUS SC: Yes, Chair, UU2.

10 **CHAIRPERSON:** UU2, okay.

**AFFIDAVIT OF MPHIKELEI KAIZER MAXATSHWA
HANDED IN AS EXHIBIT UU2**

ADV PRETORIUS SC: Thank you. Mr Maxatshwa, would you please look at paragraph 4 on page 184 of your affidavit?

MR MAXATSHWA: Yes, I am at page 184.

ADV PRETORIUS SC: Right. And you say in that paragraph that you have read the affidavit of Mr Mokoena, you have read the founding affidavit deposed to by Mr
20 Mokhesi in the review application and you have read extracts from the evidence given and the disciplinary proceedings given by Mr Mokoena and Mr Neville Chaney, is that correct?

MR MAXATSHWA: Correct, Chair.

ADV PRETORIUS SC: And you refer in paragraph 5 to

certain disciplinary proceedings the result of which was that you and some of your colleagues who were employed in the Department of Human Settlements in the Free State were dismissed.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: You say in paragraph 6 that you have taken a view that your dismissal was unfair and you refer to the contents of your affidavit.

MR MAXATSHWA: Correct.

10 **ADV PRETORIUS SC:** What is the status of those – your challenge to the disciplinary proceedings at the moment?

MR MAXATSHWA: Chair, we are now at the CCMA, we have referred the matter after our dismissal in 2015 but the CCMA has not assisted us up until so far. There has been so many changes of Commissioners on our case. There was a stage where the evidence bundles of the transcripts were lost at their offices. Yes.

ADV PRETORIUS SC: It seems a very long time that has elapsed before you actually come before and get a result
20 from the CCMA.

MR MAXATSHWA: Yes, Chair, it has been a long time. Normally they say justice delayed is justice denied.

CHAIRPERSON: Has that been over the what, seven years? Has there been no time when oral evidence was led? In other words, no oral evidence has been led at all

at the CCMA?

MR MAXATSHWA: No oral evidence has been led at all at the CCMA.

CHAIRPERSON: Ja, it is ...[intervenes]

ADV PRETORIUS SC: Perhaps that is a matter that we could look into, Chair.

CHAIRPERSON: Ja, it is quite long, ja.

ADV PRETORIUS SC: And certainly, the circumstances giving rise to the delays, lost files and the like. In any event, you also refer in paragraph 9 – well, before we go there, you refer to the Open Waters report. Have you been given an opportunity now to peruse that report?

MR MAXATSHWA: We were denied that particular report.

ADV PRETORIUS SC: I am sorry, I did not...?

MR MAXATSHWA: We were denied that particular report.

ADV PRETORIUS SC: Alright. Well, it is available. We can make it available to you should you require it.

MR MAXATSHWA: Chair, if it is available, we will gladly accept it and study it.

ADV PRETORIUS SC: In paragraph 9 you refer to an investigation carried out by the Special Investigation Unit. That report of the SIU you say was never formally submitted to and adopted by parliament. That is information that you have received.

MR MAXATSHWA: Ja, that is the information we received,

Chair.

ADV PRETORIUS SC: Alright. In any event any information that you do require can be made available to you.

MR MAXATSHWA: Chair, will gladly like the assistance of the Commission with that particular information.

ADV PRETORIUS SC: In paragraph 12 you list your qualifications. What are they?

MR MAXATSHWA: Chair, I have junior degree in law,
10 B.Proc and an honours degree in law, LLB, both from the University of Durban-Westville completed in 1995. I also have an honours in Government Regional Planning from the University of the Free State.

ADV PRETORIUS SC: You were a Municipal Manager at the Nketoana Municipality from 2000 to 2006, is that correct?

MR MAXATSHWA: That is correct, Chair.

ADV PRETORIUS SC: And then when were you appointed to the Local Government and Housing department in the
20 Free State Province?

MR MAXATSHWA: At the expiry of my contract at Nketoana I was appointed at Free State, the Local Government and Housing department in 2006, November.

ADV PRETORIUS SC: What position did you occupy then?

MR MAXATSHWA: I was a Chief Director in the Local Government branch.

ADV PRETORIUS SC: Of the Local Government and Housing?

MR MAXATSHWA: The Department of Local Government and Housing, yes, Chair.

ADV PRETORIUS SC: And to whom did you report?

MR MAXATSHWA: Then I reported to Mr [indistinct] 11.15 Konsani(?).

10 **ADV PRETORIUS SC:** And to whom did that person report?

MR MAXATSHWA: That person reported to MEC Mafereka then

ADV PRETORIUS SC: Alright. So just for the record, is it my Ralikantsane that you mentioned now?

MR MAXATSHWA: Yes, Mr Ralikantsane.

ADV PRETORIUS SC: That is R-a-l-i-k-a-n-t-s-a-n-e. His first Kopung, K-o-p-u-n-g and Mr Joe Mafereka, M-a-f-e-r-e-k-a, is that correct?

20 **MR MAXATSHWA:** That is correct, Chair.

ADV PRETORIUS SC: In 2009 we know that Mr Magashule became Premier and Mr Zwane became the MEC for Local Government and Housing, is that correct?

MR MAXATSHWA: That is correct.

ADV PRETORIUS SC: And the head of departments

Human Settlements was Mr Mokoena.

MR MAXATSHWA: That is correct, Chair.

ADV PRETORIUS SC: The names of all the departments and positions may be confusing because there were changes over time.

MR MAXATSHWA: That is correct, Local Government and Housing, as a department, was split into two, it was now Local Government and Traditional Affairs and then a Department of Human Settlement was created separately.

10 **ADV PRETORIUS SC:** And you were in the Human Settlements side of the organogram, is that right?

MR MAXATSHWA: I was transferred from Local Government to Human Settlement as a Chief Director.

ADV PRETORIUS SC: The reporting structures appear at page 190 at paragraph 21. Do you see that?

MR MAXATSHWA: Correct, Chair.

ADV PRETORIUS SC: And without intending any adverse comment, you are fairly low down in that hierarchy.

20 **MR MAXATSHWA:** Yes, Chair, it would be the HOD above me, there will be DDGs and then there will be the CFO above me and then will come as Chief Directors just below those executives.

ADV PRETORIUS SC: Yes, the only reason I make the point is that those were disciplined, who were ultimately disciplined and dismissed were not at the top of the

rankings.

MR MAXATSHWA: Yes, correct, Chair.

ADV PRETORIUS SC: Can I ask – we have just had a message from the transcriber, unlike other witnesses, you speak very loudly and clearly, so if you could just move away from the microphone please? We have to say exactly the opposite to all the other witnesses. What were your responsibilities as Chief Director? You deal with that in paragraph 24.

10 **MR MAXATSHWA:** In the Human Settlement?

ADV PRETORIUS SC: Yes.

MR MAXATSHWA: In the Human Settlement I had two – oh no, two directorate, I had a technical directorate which was mainly your building inspectors that will inspect the construction of the houses and they were constructed and then on the other directorate will be directorate responsible for planning and research.

ADV PRETORIUS SC: So the inspectors who went out pursuant to the building contracts and inspected and
20 milestones, did they report to you?

MR MAXATSHWA: They reported to me via the director that was responsible for them which was Mr Kabelo Koloi.

ADV PRETORIUS SC: Koloi, right. On page 192 you deal with the standard protocols for building RDP houses with the Division of Revenue Act funding, DORA funding. That

evidence is a matter of record we need not detail it any further. But what is your recollection? You deal with it in paragraph 30 of the amount allocated for the 2010/2011 financial year. I am referring to paragraph 30 on page 193.

MR MAXATSHWA: Yes, Chair. We were allocated 1.4 billion by the National fiscus, the National Treasury via Human Settlement Department.

ADV PRETORIUS SC: Yes, most of that was a new allocation, we understand, but part of that was a rollover
10 from the previous financial year.

MR MAXATSHWA: Ja, they were the rollover a new allocation will be combined to form the amounts.

ADV PRETORIUS SC: Yes. And the purpose of that, as we know, was for the construction of low cost housing in the province.

MR MAXATSHWA: Correct, Chair.

ADV PRETORIUS SC: What is the provincial business plan? You deal with that at paragraph 31 and following.

MR MAXATSHWA: The provincial business plan is a plan
20 that each province compiles a year before implementation which talks to the projected allocated amount in terms of medium term expenditure framework which then says this will be our projects, low cost housing in terms of several programmes that are included in the what you call the housing project.

ADV PRETORIUS SC: And in order to compile that business plan you communicate with the municipalities where these houses will be built on the one hand and the National Department on the other.

MR MAXATSHWA: Correct, Chair. The planning cycle of government is such that a municipality must compile and IDP. Within that particular integrated development plan you have to have a housing sector plan which is a specific plan that talks to housing matters. That housing sector
10 plan will identify that area of needs and it will also talk to the special availability of land and the number of people that are looking for housing in the area. Then it will be integrated into the district development plan. The district development plan will also be integrated with other departments at a provincial level where you produce what we call provincial growth and development strategy which will also talk to the special development framework of the province.

In essence, the documents, the building documents
20 will then tell you where we should be focusing in terms of delivery of housing together with other amenities.

ADV PRETORIUS SC: So at a general level there is a detailed system and plan that controls the allocation of money for housing projects in a particular province.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: Let us deal with it at another level. One of the issues of concern in this matter is that monies were not properly spent and there was wasteful and irregular expenditure in the construction of houses. Now there are various protections built into the system which were ignored in this case which you will talk about in your evidence but before payment can be made to a contractor, milestones must be achieved. We have heard that evidence. Is that correct?

10 **MR MAXATSHWA:** That is correct.

ADV PRETORIUS SC: What are those milestones?

MR MAXATSHWA: There is three milestones. There is basically the foundation, a milestone, the wall plate and then the roofing, completion milestone.

ADV PRETORIUS SC: Now before the contractor can claim at the completion of any milestone, you have told us that there are inspections. We have heard that there are inspections that must take place and the work must be verified.

20 **MR MAXATSHWA:** Correct, Chair.

ADV PRETORIUS SC: And not only is this provided for in the contract itself but in the Human Settlements Scheme documentation, am I correct?

MR MAXATSHWA: I mean ...[intervenes]

ADV PRETORIUS SC: Housing subsidy scheme.

MR MAXATSHWA: Housing subsidy scheme, which is the system that assist in building management in the Department of Human Settlement both provincial and national.

ADV PRETORIUS SC: Yes. Would you just tell the Chair in paragraph 42 and 43 on page 195, you talk about those inspections which are required by the contract and the housing subsidy scheme, those events that must take place before payment can be made, paragraph 42 and 43.

10 Particularly 43, the extent to which the inspection must be carried out.

MR MAXATSHWA: Yes, Chair. Firstly, you will receive a request from the contractor that they have completed the excavations. There would be different activities on a foundation itself. There will be excavations, compactions and filling of the foundation that should be inspected before a slab is casted, the concrete is casted.

After that, after the casting of the foundation it will be left to cure and then seven days to ten they will request
20 that the inspector should come and approve that particular foundation that has been completed and is standing as per the specifications. But then the contractor's engineer will also be there to make sure that if there are any concerns that our inspector, the department, raises is able to can explain.

ADV PRETORIUS SC: Fine, if you would go to paragraph 44. If the construction work is then approved what happens then?

MR MAXATSHWA: In the construction, the milestone is approved, all the concerned parties meaning our inspector, the engineer, the contractor's engineer, NHRBC's people, inspectors, and the municipal building inspector, they certify the document and give it back to the contractor to go and submit for payment at the department.

10 **ADV PRETORIUS SC:** And finally, what happens then?

MR MAXATSHWA: Finally, when it is submitted it is captured on the system, the HS system, and there will be another system of payment which is called BAS where information will also be captured on the CFO's side so that payment can be generated and then the contractor can be paid.

ADV PRETORIUS SC: You referred to the system, is that B-A-S system?

MR MAXATSHWA: Ja, B-A-S system, BAS.

20 **ADV PRETORIUS SC:** Right. The point of this evidence is just to illustrate that there is an elaborate system of checks and balances for the proper expenditure of payment for low cost housing on the one hand and for the proper construction under supervision of low cost housing on the other hand, is that correct?

MR MAXATSHWA: That is correct.

ADV PRETORIUS SC: So if that system is followed, the low cost housing plans should work.

MR MAXATSHWA: That is correct, Chair.

ADV PRETORIUS SC: Now clearly, we know that that system simply did not apply in relation to what happened in 2010/2011, am I correct?

MR MAXATSHWA: Ja, to some extent it did not apply, Chair.

10 **ADV PRETORIUS SC:** Well, we can deal with that in your evidence as we go through it. We have dealt with the events of 2010/2011 which required the issue of a new tender and the commencement of the new procurement process for the appointment of contractors. We need not go into any detail although you do deal with it in detail in your statement.

The result of this was a new tender process for the appointment of contractors was initiated and that collapsed, basically, the tender period was exceeded and it
20 was decided to approve a database of contractors. You recall all that.

MR MAXATSHWA: I recall that.

ADV PRETORIUS SC: But that would not have happened at your level of operation.

MR MAXATSHWA: No, that will be a supply chain matter.

ADV PRETORIUS SC: But we know that that database included contractors who had been disqualified in the abandoned procurement process or, amongst other things, that they were not competent to do the work. Do you recall that?

MR MAXATSHWA: I recall that because I have a sight of the bid evaluation report. The bid evaluation committee report and also the bid adjudication report.

ADV PRETORIUS SC: At the level at which you were
10 dealing with the construction of houses and supervising inspectors, did the appointment of under-qualified contractors cause a problem in the construction of houses?

MR MAXATSHWA: Chair, there will be new entrants into the system. In a normal construction business you look for those construction companies that have a muscle to can handle the construction. When you look at their bid document, they will tell you the functionality and their financial muscle that can handle the project. But once those requirements are not in existence in the bid
20 documents, you will find it hard for those that gets appointed to move at speed.

ADV PRETORIUS SC: And the quality of the building that results?

MR MAXATSHWA: That will also affect the quality of building because they will not be having that experience,

the [indistinct] 28.40 to produce quality. Hence you will allocate them 50 or 100 units just to test the waters and then put an emphasis on your inspectors to say look after these guys so that they can produce quality in terms of the specs and if there is any shoddy work they will be punished for that because at the end of the day you will have to demolish the house and then start afresh.

ADV PRETORIUS SC: Let us move on then. Much of the content of your affidavit up to page 201 has already been
10 dealt with in evidence and we need not deal with it because it is largely consistent with what you say but if we can go to page 201 of FS12 and deal with the ERP or the expenditure recovery plan. We know that the National Department of Human Settlements raised concerns about the level of spending in the Free State department, correct?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: And Minister Sexwale issued a
...[indistinct] to the MEC, Mr Zwane, expressing his
20 concerns.

MR MAXATSHWA: Correct Chair.

ADV PRETORIUS SC: And the requirement that arose out of that communication was to produce an expenditure recovery plan.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: And you say in paragraph 64 that that plan was indeed prepared as part of the so-called War Room. What was the War Room?

MR MAXATSHWA: The term War Room Chair you will hear it in most of the government sectors. When there is trouble a War Room is created it is where people will sit, monitor and implementation of the decisions that have been taken to ensure that there is constant monitoring and there is constant delivery on the ground and if there is any
10 problems you will raise a hand and say this is concerning me and can it be attended by the relevant authorities.

ADV PRETORIUS SC: The advance payment plan we have heard that it originated in discussions in the War Room that the instance of the former MEC Mr Zwane, is that your recollection?

MR MAXATSHWA: No Chair, my recollection is that the advance payments scheme – the War Room was a product of the advance payment scheme because whilst that scheme was designed and approved it needed hands of
20 people that will manage what is contained in the advance payment scheme.

ADV PRETORIUS SC: Alright, so other witnesses have said that the plan was actually devised as part of the War Room but that is a matter of semantics. There was a meeting at which the devising of the plan was discussed.

The creation of the plan was discussed and you say the War Room meetings governed the implementation of the plan and monitored the implementation of the plan. Is that correct?

MR MAXATSHWA: That is correct.

ADV PRETORIUS SC: Alright, the ERP the expenditure recovery plan where was that prepared?

MR MAXATSHWA: The ERP it was prepared by the senior managers including MEC Zwane in a separate meeting.

10 **ADV PRETORIUS SC:** Alright.

MR MAXATSHWA: You mentioned actually that a notice from Minister Sexwale was sent to the office of MEC Zwane. He then called a meeting of all head of officials both in local government and traditional affairs because you had people who were experienced in terms of the government planning and those that were controlling especially the directory that controls the approval of special plans that establishment plans and alike. And included in that meeting were also the officials from deputy
20 director level in the human settlement up to the chief director level.

ADV PRETORIUS SC: Did you take any part in the preparation of that plan, did you contribute to the preparation of that plan?

MR MAXATSHWA: Yes, Chair I took part because my

corner as a chief directorate was going to be handling the technical aspects of the construction. So you had to say look from where I am sitting this is what I will need if we talk capacity building.

If we had to run faster, I will need more runners, more

inspectors on the ground in terms of human bodies, warm bodies and I will also need maybe software gadgets that will assist me when the outside to communicate and the
10 budget linked to that because if inspectors go outside Bloemfontein, they will have either to spend the whole week or two weeks being on the field.

ADV PRETORIUS SC: At a more senior level – and I am referring to HOD's and I am referring to the MEC, who was involved in the preparation of the ERP?

MR MAXATSHWA: Mr Mokoena was there, Mr Tsoametsi was there, the CFO was there and Ms Dhlamini and the MEC's office was there also included was the MEC.

ADV PRETORIUS SC: Right and were they responsible
20 for the final compilation of the plan, together? You say so in paragraph 64.

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: Now that ERP is something separate from the advance payment plan as I understand your view of things.

MR MAXATSHWA: Ja, there will be an ERP and there will also be an advanced payment scheme.

ADV PRETORIUS SC: Right who – were you involved in the development of the advanced payment plan?

MR MAXATSHWA: The advanced payment scheme as you said?

ADV PRETORIUS SC: Yes.

MR MAXATSHWA: EPS?

ADV PRETORIUS SC: Yes.

10 **MR MAXATSHWA:** No I was not involved.

ADV PRETORIUS SC: We have dealt at some length with the document which is a slide presentation of the ERP, the expenditure recovery plan and the cash flow projections section of that plan. You talk about that in paragraph 66. Do you see that?

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: Now that cash flow projection and I think you have shadowed it in your previous answers now contemplated the normal process taking place, milestone to
20 milestone and payment on milestones. Do I understand it correctly?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: The consensus so far has been that – well let me ask you this first. When was that plan compiled and completed the plan part of it? When was the

document finally completed?

MR MAXATSHWA: The ERP or the?

ADV PRETORIUS SC: The ERP.

MR MAXATSHWA: The ERP was compiled during October month.

ADV PRETORIUS SC: Right and we know from other witnesses and you can correct us if this evidence is not correct that at that stage no houses had been completed, at that financial year.

10 **MR MAXATSHWA:** There were houses that were completed on the ground, rolling from the previous financial year.

ADV PRETORIUS SC: Yes, but we talking about this particular allocation.

MR MAXATSHWA: On this particular allocation, no.

ADV PRETORIUS SC: Right, okay now would you agree with the evidence that has been given to date that the cash flow projections were overly ambitious. You were not going to spend over a billion rand in the final months of the year.

20 **MR MAXATSHWA:** Ja, Chair I will agree and qualify my statement by saying if we were to start in November running there will be construction holiday in December which will move up until January. Middle January is when everybody comes back to do construction. So it is basically the step in terms of your delivery.

ADV PRETORIUS SC: Yes, you would not finish by the end of the financial year.

MR MAXATSHWA: Ja, you will not finish you will obviously have – what you call it – a rollover of the funds to the next financial year.

ADV PRETORIUS SC: Well yes and you say that was obvious but what the cash flow projections said was that everything would be complete to the tune of over a billion rand by March.

10 **MR MAXATSHWA:** That was ambitious.

ADV PRETORIUS SC: Yes, to put it gently.

CHAIRPERSON: Was it ever going to happen?

MR MAXATSHWA: No, Chair.

CHAIRPERSON: It was not going to happen.

MR MAXATSHWA: It was not going to happen as I have said if you begin in November to start chasing construction, you will be hit by the construction holiday anyway.

CHAIRPERSON: Yes.

20 **MR MAXATSHWA:** The suppliers will close, producers of material will be closed mostly people who want to go and have festive with their kids especially the loyal employees that will have migrated to come in and work in certain projects.

CHAIRPERSON: Yes, did you say you were part of the

preparation of that plan?

MR MAXATSHWA: Of the ERP, yes.

CHAIRPERSON: You were part?

MR MAXATSHWA: I was part.

CHAIRPERSON: You admit that you were all aware that you were misrepresenting the position when you indicated through the plan that by end of the financial year you would have completed the allocation, the houses needed for the allocation.

10 **MR MAXATSHWA:** Chair yes we are sitting there and debating all of us and if your point was not carrying any sense those who believed that this can be done will say no this can be done. But you will sit there in a meeting and say...[intervene]

CHAIRPERSON: Speaking for yourself you knew that it could not be done.

MR MAXATSHWA: Ja, from my experience in terms of construction?

CHAIRPERSON: Yes.

20 **MR MAXATSHWA:** Yes, that was impossible.

CHAIRPERSON: Yes, and was there anyone in the room who was participating in that plan who said that they genuinely believed it was achievable? Do you remember anyone in the room who participated in preparing the plan who genuinely or who said they genuinely believed it was

achievable?

MR MAXATSHWA: Chair because there was so many of us...[intervene]

CHAIRPERSON: Or is the position that when all is said and done, when you look at everybody you know that everybody knew that this was not achievable. They may have said whatever they said but the truth is they knew it was not achievable. Are you able to say that or are you only able to say that for yourself?

10 **MR MAXATSHWA:** I am able to say the majority of us will say with the lack of capacity as a new department this will not be happening.

CHAIRPERSON: Yes.

MR MAXATSHWA: Ja.

CHAIRPERSON: Okay, do you remember anyone that may have pushed strongly that as far as he or she was concerned this was achievable and if so who was that?

MR MAXATSHWA: Chair because it was a long time when this meetings happened one cannot clearly recall.

20 **CHAIRPERSON:** No that is fine.

MR MAXATSHWA: Yes.

CHAIRPERSON: No okay, no that is fine, yes Mr Pretorius.

ADV PRETORIUS SC: There must have been present at these meetings or at this meeting technical experts people

who understood the requirements of the normal building process. The costing of foundations, the inspections, the walls, the roofing all the services that had to be provided. There must have been technical experts with a knowledge of whether this was an achievable plan or not.

MR MAXATSHWA: Yes, Chair I would say there must have been people with knowledge but since we are a new department still struggling to get experts. If I put it right the technical experts that we needed were like quantity
10 surveyors, professional engineers in terms of construction, civil engineers that will talk to your bulk supply and stuff like that.

Those were not in existence in our department until such time we received I think it was a year later when we received assistance from the Cuban Government in terms of the Cuban exchange program and the Cuban professionals. Then we had architects, we had also engineers people that can really think thoroughly on technical matters.

20 **ADV PRETORIUS SC:** You know this is a technical exercise Mr Maxatshwa one would have thought with a billion rand at stake that at the very least technical expertise would have been called upon in the preparation of this review plan. It seems to me that it was prepared without any regard to the technical aspects of the matter

and this is a technical matter.

MR MAXATSHWA: I agree with you with that statement.

ADV PRETORIUS SC: But you say in paragraph 67 Mr Maxatshwa that the ERP was presented at the October technical ministerial meeting of the executive council that is the MINMEC, the technical MINMEC. Which senior officials would have attended that meeting?

MR MAXATSHWA: The October meeting will have been attended by myself and Mr Mokoena, the CFO.

10 **ADV PRETORIUS SC:** Right and any other officials of a senior nature from the national department?

MR MAXATSHWA: Yes, from the national department you will have the whole senior management and the executive management there from the Director General, Mr Thabane Zulu who is the chief operation officer, **Mr Nagel Chain 0:16:20:08**, the CFO office and then you will have their supporting staff.

ADV PRETORIUS SC: Did the members of the national departments say anything to the members of the provincial
20 department about the viability and legality of the ERP?

MR MAXATSHWA: At the meeting in October?

ADV PRETORIUS SC: Yes.

MR MAXATSHWA: In October we say that because to go and revise the plan and present what would have been a revised ERP in the November technical MINMEC.

ADV PRETORIUS SC: Alright, and did the November meeting then take place?

MR MAXATSHWA: Yes, the November meeting did take place.

ADV PRETORIUS SC: You talk about that on page 202.

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: And was it at that meeting that the advanced payment issue was raised?

MR MAXATSHWA: Yes, I did highlight at that meeting that
10 this is the thinking about spending the money in the Free State.

ADV PRETORIUS SC: And what was the response of the meeting to what you said?

MR MAXATSHWA: The response from those that had the experience especially guys from Gauteng were saying that will not work, we have the experience of it.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: At that stage when you said to them this was the thinking in the Free State about advance payments
20 where did you get that idea from had that been discussed in the Free State already?

MR MAXATSHWA: Yes, it was discussed.

CHAIRPERSON: It had already been discussed.

MR MAXATSHWA: It had already been discussed.

CHAIRPERSON: But it had not been placed put in writing

or in anything like that?

MR MAXATSHWA: Yes, Chair.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: Alright you deal with that in the next paragraph perhaps the most straight forward question was as far as you are concerned whose idea was the advanced payment plan?

MR MAXATSHWA: It was the idea of the MEC.

ADV PRETORIUS SC: And as you say in paragraph 71 by
10 the 18th of November when this technical MINMEC meeting took place Mr Tsoametsi recommendations or his document which we have discussed in evidence thus far had not yet been signed off that only happened on the 25th of November 2010. Correct?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: At the two meetings or in fact there were three meetings. There was one on the 18th of November, there was one in October and there was a third meeting on the 19th of November. What was that meeting?

20 **MR MAXATSHWA:** It was the political MINMEC as you know it, the Ministers and the MEC's.

ADV PRETORIUS SC: And at that meeting which Ministers and which MEC's would have attended?

MR MAXATSHWA: Minister Tokyo Sexwale was our Minister then and then all the MEC's responsible for human

settlement or local government, traditional affairs and human settlement. Whatever combination that you will have in any province.

ADV PRETORIUS SC: Did you attend that meeting the MINMEC meeting, the Minister – the political meeting as you call it?

MR MAXATSHWA: Yes, Chair I attended it.

ADV PRETORIUS SC: What was said there both about the ERP and about the advanced payment plan?

10 **MR MAXATSHWA:** That political MINMEC confirmed what was submitted as recommendation from the technical MINMEC on the ERP, our ERP.

ADV PRETORIUS SC: What was that?

MR MAXATSHWA: It was summarised in the minutes where the Chairperson said I will recommend that not to be taken of the presentation of the Free State and that the ERP is not convincing enough and the money will be taken from the Free State.

20 **ADV PRETORIUS SC:** Okay so it was rejected the ERP was rejected?

MR MAXATSHWA: The ERP was rejected.

ADV PRETORIUS SC: And the advance payment plan?

MR MAXATSHWA: It was not only ERP itself.

ADV PRETORIUS SC: No, no I know it was not only the ERP but was the advance payment plan discussed at the

meeting of 19 November?

MR MAXATSHWA: Ja, the comments were passed after I have indicated the comments were passed to say no that thing is unlawful, it will not work.

ADV PRETORIUS SC: So at the political meeting where the National Minister and the MEC's were present held on the 19th of November 2010 two things happened. The ERP plan was rejected and secondly the advance payment plan was stated to be illegal and it could not continue.

10 **MR MAXATSHWA:** Yes, Chair.

CHAIRPERSON: And did your MEC participate in that discussion?

MR MAXATSHWA: No, Chair he had tendered the apology together with the HOD.

CHAIRPERSON: So both of them were not there?

MR MAXATSHWA: Ja they were in the NCOP, the NCOP was visiting Free State on that particular dates.

CHAIRPERSON: Yes, I may have missed something that I think would have come earlier. I think I saw in your
20 affidavit that you said that when the idea of advanced payment was put on the table by MEC Zwane in a meeting in the Free State in the housing department that the reaction of most of the people who attended that meeting was that that would be illegal, advance payment would be illegal. Is that correct?

MR MAXATSHWA: No Chair.

CHAIRPERSON: Oh I misunderstood.

MR MAXATSHWA: I was talking to the ERP.

CHAIRPERSON: Oh the ERP.

MR MAXATSHWA: Yes.

CHAIRPERSON: Not the advance payment.

MR MAXATSHWA: Yes, not the advance payment.

CHAIRPERSON: Oh okay alright.

ADV PRETORIUS SC: But we have evidence on record of
10 various meetings that took place in the Free State and
meetings that took place involving the National Minister
and members from the national department, there were a
range of those meeting.

But let me put it at a summary level the details are
in the affidavits and in the review application which was
testified to by Mr Mokhesi. In the province was it made
clear to the department officials in the department and the
MEC that the advanced payment plan was unlawful.

MR MAXATSHWA: Chair according to what I have read
20 from the affidavit of Mr Mokhesi that was told to the MEC.

ADV PRETORIUS SC: Right.

MR MAXATSHWA: In the meeting between I think it was a
private meeting between the Minister and the MEC together
with the HOD.

ADV PRETORIUS SC: Now we also know from your

evidence now that the ERP plan or ERP itself was also rejected.

MR MAXATSHWA: It was rejected.

ADV PRETORIUS SC: And you refer to a meeting of the 19th of November which was not attended by Mr Zwane nor by the HOD at the time Mr Mokoena?

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: Would they have received reports of what happened at the meeting that would seem probable
10 as a matter of common sense. But what do you say about that?

MR MAXATSHWA: Yes, Chair as a delegated person at a meeting you will immediately when issues are raised and which are burning your province if I may put it in that particular manner take a phone and call the delegating authority which is the HOD. To say HOD this is what had been said in this particular meeting, the ERP is not accepted, the idea of the advance payment scheme is not
20 accepted.

20 So please inform the higher authority which is the MEC because by then one was thinking that both of them are together at the NCOP which was held in QwaQwa. So they will brief one another in terms of what is to happen. Following that would be the minutes both sets of minutes the technical MINMEC and also the MINMEC minutes will

be transcribed same day and then be sent to all the recipients, the people that should have been in that particular meeting as per the distribution list.

CHAIRPERSON: I have just picked up what I had in mind when I asked you the last question that I asked you. It appears in paragraph 83 of your affidavit that maybe is something that Mr Pretorius has still to come to I am not sure. But I see there you deal with a certain meeting but I see that you do not indicate whether you attended the
10 meeting yourself that was called by Mr Zwane seems to have been on the 29th of October 2010 where he put his plan on the table, his solution in quotes. And you say in paragraph 83 fist line:

“The opinion of the meeting was that such a payment system would be illegal because the HSS policy framework did not provide for advance payments.”

I think that is what I had in mind can you see that?

MR MAXATSHWA: Yes, Chair I can see that.

20 **CHAIRPERSON:** Yes, you did not attend that meeting yourself. You start talking about that meeting in the previous page from paragraph 79. You mentioned people were there but you do not seem to mention yourself.

MR MAXATSHWA: Ja, before the meeting of the 29th Chair we were called into a meeting by MEC Zwane which

meeting was alluded to by Mr Mokoena where the MEC briefed us about the advance payment scheme.

CHAIRPERSON: Yes.

MR MAXATSHWA: Yes.

CHAIRPERSON: So but this one of the 29th you did not attend or do you not remember?

MR MAXATSHWA: The technical meeting of the 29th I did attend with Mr Mokoena.

CHAIRPERSON: You did attend?

10 **MR MAXATSHWA:** Yes.

CHAIRPERSON: Oh okay but can you see that you do say in paragraph 83:

“That the opinion of the meeting was that the pre-payment system was illegal.”

Remember I asked you the question whether the majority of the people who attended the meeting where Mr Zwane put on the table, put his proposal on the table, his solution whether the majority of the people indicated that his solution would be illegal in terms of pre-payments and you
20 said no you had said that in regard to the ERP.

MR MAXATSHWA: Ja, in the meeting before October where the MEC briefed us about the advance payments system.

CHAIRPERSON: Yes.

MR MAXATSHWA: Yes.

CHAIRPERSON: Yes, no, no I will come to that just now I just want to understand what the position is with regard to what was said at this meeting of the 29th of October. You confirm what you say in paragraph 83 namely:

“That the opinion of the meeting was that such a payment system would be illegal.”

MR MAXATSHWA: Yes.

CHAIRPERSON: That was the view of the meeting.

MR MAXATSHWA: Yes, Chair.

10 **CHAIRPERSON:** Yes, okay but you understand why I am coming back to it.

MR MAXATSHWA: Okay, Chair.

CHAIRPERSON: Do you understand?

MR MAXATSHWA: I understand.

CHAIRPERSON: Because I thought you did not seem to think that that what was said but you are [indistinct] if that is true.

MR MAXATSHWA: Yes Chairperson.

CHAIRPERSON: That was the view of the meeting?

20 **MR MAXATSHWA:** Yes.

CHAIRPERSON: On the 29th.

MR MAXATSHWA: Yes.

CHAIRPERSON: And in the...

MR MAXATSHWA: Not – not...

CHAIRPERSON: In the meeting before that that you have

just talked about.

MR MAXATSHWA: You [talking over one another].

CHAIRPERSON: Was the position the same?

MR MAXATSHWA: Before the meeting of the 29th

CHAIRPERSON: Yes.

MR MAXATSHWA: The technical meeting.

CHAIRPERSON: Ja.

MR MAXATSHWA: There was a meeting of the MEC too.

CHAIRPERSON: Yes.

10 **MR MAXATSHWA**: Yes where ...

CHAIRPERSON: And that meeting was attended by Mr Zwane, yourself, Mr Mokoena and who else?

MR MAXATSHWA: And Ms Dlamini.

CHAIRPERSON: Ms Dlamini.

MR MAXATSHWA: Mina Meintjies.

CHAIRPERSON: Yes.

MR MAXATSHWA: Kabelo Kaloi.

CHAIRPERSON: Yes. There might be one or two that you forget.

20 **MR MAXATSHWA**: Ja Muso Tsoametsi was in that – also in that meeting.

CHAIRPERSON: No that – okay that is fine you do not have to specify all of them.

MR MAXATSHWA: Yes.

CHAIRPERSON: At the – is that the first meeting where Mr

Zwane advanced his “solution” in quotes for the problem?

MR MAXATSHWA: Yes Chair.

CHAIRPERSON: Yes. And what was the reaction of those who were present to that proposal of advanced payments?

MR MAXATSHWA: The reaction was that will be legal because you know the milestones.

CHAIRPERSON: Ja.

MR MAXATSHWA: Does not cater for such.

CHAIRPERSON: Yes.

10 **MR MAXATSHWA**: Yes.

CHAIRPERSON: There is a meeting that Mr Mokoena spoke about in his evidence yesterday and I think he said it is the meeting where Mr Zwane put this proposal on the table for the first time.

MR MAXATSHWA: It is the same meeting.

CHAIRPERSON: And he said he was the only one who spoke against this “solution” and said it would be illegal. He said that everyone else was quiet and he even went further and said it was as if the other people in the meeting knew
20 about this maybe there had been some discussion. The meeting seemed to be just between himself and Mr Zwane. Did you – would that reflect what the position was? Were a lot of people in the meeting quiet during that meeting?

MR MAXATSHWA: No Chair. When you attend a meeting with the MEC you are expected to contribute.

CHAIRPERSON: Yes.

MR MAXATSHWA: There because whatever decision that will be taken.

CHAIRPERSON: Yes.

MR MAXATSHWA: Will – you will be required to implement.

CHAIRPERSON: Yes.

MR MAXATSHWA: So you will have to say your say and say this is how I see it.

CHAIRPERSON: Yes.

10 **MR MAXATSHWA:** Yes.

CHAIRPERSON: But is the position as you recall with regard to that meeting which was prior to the technical meeting – is the position that a lot of people may have kept quiet but they were associating themselves with the views expressed by Mr Mokoena or is your recollection that they were actually vocal; they did express the same views as well namely these advance payments would be illegal?

MR MAXATSHWA: Chair the people who are attending that meeting were vocal.

20 **CHAIRPERSON:** Yes.

MR MAXATSHWA: Ja [00:03:03] know how the system should work.

CHAIRPERSON: Yes.

MR MAXATSHWA: Yes.

CHAIRPERSON: Are you able to say those who were saying

this system would be illegal would have been the majority of those who attended but some agreed with the – with the MEC or would you say everybody was – spoke with one voice that this system of payment would be illegal?

MR MAXATSHWA: The majority of us in that meeting.

CHAIRPERSON: Yes.

MR MAXATSHWA: We are not – we are not in agreement.

CHAIRPERSON: Yes.

MR MAXATSHWA: Yes with the MEC.

10 **CHAIRPERSON**: You cannot say everybody but the majority?

MR MAXATSHWA: Ja the majority.

CHAIRPERSON: Okay alright. Thank you Mr Pretorius.

ADV PRETORIUS SC: Chair we were coming to...

CHAIRPERSON: And maybe – I am sorry

ADV PRETORIUS SC: To the advance payment system.

CHAIRPERSON: I am terribly sorry Mr Pretorius. At that meeting when the majority made it clear to Mr Zwane that they thought his “solution” in quotes was illegal were there
20 reasons why the majority thought his “solution” was illegal spelt out?

MR MAXATSHWA: Chair yes considering that we are a new department.

CHAIRPERSON: Hm.

MR MAXATSHWA: If you had to go buy the material at

[00:04:27] you will need as I have said you will need more hands to be able to can keep an eye and control such an exercise. Unlike limiting it to one or two contractors where you say look come help us we are in – we are at a deep end. We are advancing you with so much so that you can be able to deliver quicker. I should say Chair it was not for the first time that the advance system was used. It was used previously when Free State lost R100 million at National fiscus. There were a few contractors that were out
10 performing others that you allocate the money but you were able to produce the type of units that were required. Even under what we became known as the Phlasela [?]. The Department will in terms of their thinking of Phlasela [?] they will send their money to Public Works to be an implementing agent on their money. I remember there were a few projects – priority projects that needed to be – to be run before 2010 where we were required as a Department to send our money to Department of Public Works and then they start building.

CHAIRPERSON: Yes. But my question is simply whether
20 you recall whether the grounds on which the majority was saying the advance payments would be illegal were spelt out – were articulated to Mr Zwane at that meeting? Do you remember whether those were set out? Somebody did say this is why it would be illegal ABCD?

MR MAXATSHWA: Chair as I am saying we were a fairly

new department. The capacity was not there. It was a huge concern.

CHAIRPERSON: Hm.

MR MAXATSHWA: Yes.

CHAIRPERSON: Hm.

MR MAXATSHWA: Of the meeting.

CHAIRPERSON: Why were you saying the prepayment advance payment would be illegal? Talk – if you talk for yourself?

10 **MR MAXATSHWA:** Chair the allocation as per the DORA Division of Revenue Act has got conditions.

CHAIRPERSON: Hm.

MR MAXATSHWA: But you do this with the money.

CHAIRPERSON: Yes.

MR MAXATSHWA: Yes this I have targets that must be achieved. Then...

CHAIRPERSON: The milestones.

20 **MR MAXATSHWA:** The milestones. Then the sector which is Human Settlement will have a system in which the expenditure will flow. Ja which will – bigger milestone achievement. The three milestones. Those milestones will get monitored and [00:07:50] every quarter to the National Fiscus. Yes.

CHAIRPERSON: Did Mr Zwane say that as far as he was concerned there was nothing illegal or unlawful about

advance payments or did, he not say anything along those lines?

MR MAXATSHWA: Chair I cannot recall exactly what he said but he came with the scheme.

CHAIRPERSON: Yes.

MR MAXATSHWA: The idea and then we debated it.

CHAIRPERSON: Yes.

MR MAXATSHWA: And he said this thing will work.

CHAIRPERSON: Yes.

10 **MR MAXATSHWA**: Ja.

CHAIRPERSON: So he said it would work?

MR MAXATSHWA: Yes this thing will work you guys have to put your mind in it to work.

CHAIRPERSON: Yes.

MR MAXATSHWA: Yes.

CHAIRPERSON: But you do not recall whether he responded to the concept of illegality?

MR MAXATSHWA: No. No Chair.

CHAIRPERSON: You cannot remember?

20 **MR MAXATSHWA**: I cannot remember.

CHAIRPERSON: Yes okay alright.

ADV PRETORIUS SC: Less there be any confusion. There was a meeting on the 28th or 29th you give two dates of the – of October the – the October MINMAC meeting – Technical MINMAC meeting, do you recall that?

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: Before that meeting right there had been a meeting about which you have told the Chair at some length of the proposal, the idea formulated by the MEC presented and the responses, correct?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: Was it at that meeting that Mr Tsoametsi was told to go and draft a memorandum?

MR MAXATSHWA: Ja that was at a meeting where Mr
10 Tsoametsi was told – instructed to go and research about the
...

ADV PRETORIUS SC: Yes and he came back with the product on the 25 November a month later?

MR MAXATSHWA: Yes Chair.

ADV PRETORIUS SC: And it was at that – that document that we have looked at that does not contain any legal advice about its legality but merely about how it should be implemented.

MR MAXATSHWA: Yes Chair.

20 **ADV PRETORIUS SC:** Alright. Then there was the meeting of the 28 October you say later 29 October but it is not material that the Technical MINMAC meeting.

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: And you have said to the Chair who attended. What was discussed at that meeting? As I

understand your statement it was the expenditure recovery plan that was discussed at that meeting.

MR MAXATSHWA: Yes because there was a concern of the below par expenditure.

ADV PRETORIUS SC: Yes.

MR MAXATSHWA: Chair.

ADV PRETORIUS SC: Right.

MR MAXATSHWA: We were required to present a recovery plan.

10 **ADV PRETORIUS SC:** Right

MR MAXATSHWA: In order to meet.

ADV PRETORIUS SC: Yes and it was not accepted at that meeting.

MR MAXATSHWA: It was not accepted we were told to go and revise it.

ADV PRETORIUS SC: Revise it. Then the next meeting Technical MINMAC meeting took place on the 18 November.

MR MAXATSHWA: Yes.

20 **ADV PRETORIUS SC:** The ERP was presented again at that meeting?

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: Is that the ERP that we have looked at ...

MR MAXATSHWA: The revised – the revised one that is contained in the document.

ADV PRETORIUS SC: Right. Was it also rejected at that meeting?

MR MAXATSHWA: It was also rejected in that meeting.

ADV PRETORIUS SC: At that meeting you also raised the advance payments issue?

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: Right what was the response of the meeting to the advance payments issue?

MR MAXATSHWA: It is unlawful you do not even try it, it is
10 risky.

ADV PRETORIUS SC: Right. That took place on the 18 November. Then on the 25 November we get Mr Tsoametsi's memorandum which is signed off by Mr Mokoena.

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: Right. Then there is a MINMAC meeting that takes place on the 19 November. Now the MINMAC meeting is what you call the political meeting.

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: At that meeting was the ERP
20 rejected?

MR MAXATSHWA: Yes it was rejected because the recommendation will have come from the Technical MINMAC.

ADV PRETORIUS SC: Right. Okay and the advance payment plan was that mentioned at that meeting?

MR MAXATSHWA: No it was mentioned in the – in the

recommendations of earlier Technical MINMAC.

ADV PRETORIUS SC: Alright okay. And you have told the Chair that although Mr Zwane and Mr Mokoena did not attend the MINMAC meeting of 19 November they would have received a report back as to the decisions of that meeting?

MR MAXATSHWA: Yes Chair.

ADV PRETORIUS SC: Right. And it was at that meeting as I understand it was decided to withhold certain monies is that
10 correct?

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: Alright. In paragraph 77 of your statement and of course we will deal in more detail with the advanced payment system at paragraph 79 and following. Certain of those questions have already been asked of you but you refer in paragraph 77 to certain correspondence between the National Department of Human Settlements and the Free State Department of Human Settlements. It is a letter dated the 8 November 2010. That appears – that letter
20 appears at page 252. It is a letter addressed to Mr Thabane Zulu of the National Department by Mr Mokoena of the Provincial Department. Do you see that?

MR MAXATSHWA: 252 yes.

ADV PRETORIUS SC: Right. It seems to deal with the expenditure recovery program and seems to talk favourably

of the possibility of its implementation. We have not put that to Mr Mokoena but that is something we can deal with later. At paragraph 77 what do you say about that letter? What is the point you are making about that letter?

MR MAXATSHWA: The point I was making is that the Minister was concerned.

ADV PRETORIUS SC: The National Minister?

MR MAXATSHWA: The National Minister. He wrote a notice to MEC Zwane to say your province is not spending
10 accordingly. Take care of the situation and tell me how are you going to take care of the situation.

ADV PRETORIUS SC: Right. And the response was the ERP?

MR MAXATSHWA: The response was the ERP.

ADV PRETORIUS SC: The intervention by the National Department and the request to Mr Zwane to deal with it and specify precisely how expenditure would take place was a letter that appears at page 252 that was the response from Mr Mokoena.

20 **MR MAXATSHWA:** Yes Chair.

ADV PRETORIUS SC: But as I understand the point you are making in paragraph 77 correct me if I am wrong was that the original concern about under-spending the allocation came from the National Department and the Minister in the National Department Minister Sexwale, correct?

MR MAXATSHWA: Correct. You will have a sight of the financial reports that his office at national level will have presented to him.

ADV PRETORIUS SC: Yes and he said to Mr Zwane:

“Account to me please. I want to know what you are going to spend and how it is going to be spent because it is a matter of concern to me.”

Correct?

10 **MR MAXATSHWA:** Correct.

ADV PRETORIUS SC: And the expenditure recovery plan was in effect the response?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: Alright. If we can go over the page please to page 204 and there you deal with the advance payment system. We have heard much evidence about it but there may be matters you could clarify; corroborate or even add to the evidence that has been given and we will deal with that now. But we will not deal with everything that you
20 have said here. The meeting that took place in October before the Technical MINMAC meeting you say here of 29 October was the meeting at which the plan was presented by Mr Zwane, is that correct?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: And you have spoken about the

responses to that plan from various people including particularly your own response.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: But is it correct in paragraph 80 where you say:

“During the meeting the MEC advised those present that he had come up with the plan.”

Is that your recollection of what happened?

MR MAXATSHWA: Correct Chair.

10 **ADV PRETORIUS SC**: In other words the origins of the plan where did this plan originate as far as you are concerned?

MR MAXATSHWA: From the MEC.

ADV PRETORIUS SC: And he explained then what that plan would involve and that was essentially buying material for building projects from suppliers and paying for those in advance.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: And you emphasise that at the stage that the payments would be made there would be no
20 contractual obligation on the Department to pay the building contractor for those materials.

MR MAXATSHWA: Correct because the contractors will have – in terms of the contract the initial contract they will have to procure the material themselves.

ADV PRETORIUS SC: So we have been through this but

just to summarise the original contract with the contractor specified that that contractor had to purchase the materials; put them in the buildings that detailed and sophisticated process of checks and balances that you have discussed with the Chair and told the Chair about involving expert assessments and the like and reports would then be followed and only then would the materials be paid for but paid to the contractor, correct?

MR MAXATSHWA: Correct.

- 10 **ADV PRETORIUS SC:** Without any of those checks and balances being adhered to payments were now being made to the – the suppliers?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: In advance.

- CHAIRPERSON:** Now given that as you say and other witnesses have said that the contracts that the Department would conclude with the contractors included the obligation of the contractor to buy the material – building material if I understand correctly. In other words if it was said that the contractor would be paid R50 000.00 per house or your
20 housing unit or R72 000.00 or whatever that included whatever the contractor would use in terms of money would use to buy the material. Is that right or do I misunderstand something?

MR MAXATSHWA: That is correct Chair.

CHAIRPERSON: Yes. So when therefore Mr Zwane came with the idea that the Department should buy material – building material for the contractors he in effect was coming up with an idea in terms of which the Department was going to pay for something that it did not need to pay for additionally. In other words the Department was – the Departments’ payment would have included the building material when they paid the contractors. Now paying for the material in terms of this proposal was actually not necessary
10 as far as the building material is concerned. Because even if that the Department did not pay that money that would be taking care of as and when the contractor was paid after those milestones had been reached. Or am I confusing you?

MR MAXATSHWA: No Chair. I was listening to what you are saying.

CHAIRPERSON: Yes in other words I just want to – because I have not heard any witness who has come before you and I have not heard you say this but maybe because I have not asked you. I have not heard anybody saying in terms of this
20 proposal by Mr Zwane if the Department paid for the building material in the way and [00:22:54] his proposal then the price that the Department was going to pay for the building of a house – each housing unit would be reduced because it otherwise had included whatever the contractor would have used to buy material. But now it is a duplication.

MR MAXATSHWA: Let me explain in this way.

CHAIRPERSON: Yes.

MR MAXATSHWA: Chair. A unit cost R55 000.00.

CHAIRPERSON: Ja.

MR MAXATSHWA: As – for a 40 square meter.

CHAIRPERSON: Yes.

MR MAXATSHWA: House.

CHAIRPERSON: Ja.

MR MAXATSHWA: That is what we refer to as a Bantam.

10 **CHAIRPERSON**: Ja.

MR MAXATSHWA: Amount allocated per unit.

CHAIRPERSON: Yes.

MR MAXATSHWA: That quantum is then distributed as per the items. There are items that constitute that particular Bantam.

CHAIRPERSON: Yes to say what is included in this.

MR MAXATSHWA: Ja what is included labour, foundation building material.

CHAIRPERSON: Ja.

20 **MR MAXATSHWA**: Plumbing.

CHAIRPERSON: Yes.

MR MAXATSHWA: And so forth.

CHAIRPERSON: yes.

MR MAXATSHWA: That will comprises – that will comprise of – comprise the price of R55 000.00.

CHAIRPERSON: Yes, ja.

MR MAXATSHWA: Then you take – say for instance you pay money on milestone 1.

CHAIRPERSON: Ja foundation.

MR MAXATSHWA: For foundation for the material. You will then take say for instance milestone 1 was R10 000.00 you will then take the R10 000.00 in terms of the material that needs to be procured and pay it over to the contractor to procure the material. The system – on the system if the
10 contractor says I need as per the quotation I need R8 000.00 you will pay in R8 000.00 and then you will keep the R2 000.00 so that when he claims for the foundation milestone you pay the remainder of R2 000.00. Yes. So you will have paid the material.

CHAIRPERSON: Ja.

MR MAXATSHWA: But there would be a remainder to complete the total amount of that particular milestone.

CHAIRPERSON: Yes but I think the – the – my question is whether Mr Zwane's proposal necessarily meant that the
20 Department would pay twice for the material or whether it did not mean that in the end even if his proposal was implemented and the material was bought in terms of his proposal the Department was going to make sure that that is set off somehow when it comes to the contractual amount per house that would have been agreed to with the

contractor.

MR MAXATSHWA: Ja the latter statement...

CHAIRPERSON: Is correct?

MR MAXATSHWA: Is correct Chair.

CHAIRPERSON: There was not going to be a duplication in terms of money spent on material?

MR MAXATSHWA: Yes Chair.

CHAIRPERSON: Okay alright. Thank you.

ADV PRETORIUS SC: At paragraph 83 and following you
10 having described the plan or having summarised the plan
that was presented by Mr Zwane at the October meeting you
summarise then the response you have given the evidence
but perhaps we could put this on record. At paragraph 83
you say:

20 “The opinion of the meeting that is in
response to Mr Zwane’s proposal was that
such a payment system would be illegal
because the Human – the housing subsidy
scheme Policy framework did not provide for
advance payments.”

So there were a number of problems not only in
relation to advance payments in the Division Revenue Act
and other regulatory provisions which you have dealt with. It
was also in contravention of the HSS Policy, correct?

MR MAXATSHWA: Correct Chair.

ADV PRETORIUS SC: Because the HSS Policy is very detailed about the milestone system.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: Interestingly it was sought to deal with that problem by putting another milestone in for advance payments.

MR MAXATSHWA: Correct Chair because the system is owned by the Department and then when you want any changes to be introduced.

10 **ADV PRETORIUS SC:** Yes.

MR MAXATSHWA: You send a request but your request will be interrogated by those that administer the system at Head Office to say, what do you want to do? This is what you want to do – no it is not possible or it is possible.

ADV PRETORIUS SC: Yes well to describe an advance payment as a milestone having been reached it is a bit of a contradiction in terms, is it not?

MR MAXATSHWA: Ja, ja I agree.

20 **ADV PRETORIUS SC:** A milestone is the achievement of certain progress whereas an advance payment is exactly the opposite.

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: And you make that point in paragraph 83 which we do not need then to deal with anymore but Mr Zwane's response to the criticisms of his plan you

summarise in paragraph 85 what did he say?

MR MAXATSHWA: Chair Mr Zwane said he was advised as per the lawfulness of the scheme.

ADV PRETORIUS SC: Did he say it had been used in other provinces?

MR MAXATSHWA: Ja he said it has been used in Gauteng that is why Muso was commissioned to go and research.

ADV PRETORIUS SC: You gave evidence earlier that it had not worked in Gauteng.

10 **MR MAXATSHWA:** Ja when I was sitting at Technical MINMAC of the 18 November the Gauteng guys confirmed that. You are putting yourself at risk. It does not work.

CHAIRPERSON: And did you subsequently share that feedback with Mr Mokoena and Mr Zwane by any chance?

MR MAXATSHWA: Yes, Chair.

CHAIRPERSON: Ja, that this is what the Gauteng people say?

MR MAXATSHWA: Yes, Chair.

CHAIRPERSON: Okay.

20 **ADV PRETORIUS SC:** But in any event, it was at that meeting that Mr Tsoametsi was mandated to go and research and come back with an answer?

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: And we have dealt with the answer he came back with and you have annexed it to your

statement. We can go over the page to the summary of the Advanced Payment System in paragraph 96.

And that fairly summarises the evidence that you have got in the agreement. In your affidavit rather. And the evidence we have heard from other witnesses.

Perhaps you could just read onto record what your summary is on paragraph 96 on page 207.

MR MAXATSHWA: Yes, Chair. I say on paragraph 96 that:

10 “The Advanced Payment System, therefore, emanated from Mr Zwane, the MEC. It was designed and detailed by Mr Tsoametsi and approved by the HOD of the Department of Human Settlements, Mr Mokoena.”

ADV PRETORIUS SC: We are going back now because we have dealt at various times with the contents of various meetings, but we have the time and just in case we leave anything out from your statement, perhaps we should deal with the contents of paragraphs 97 and following.

20 In paragraph 97, you say you conveyed the outlines of the proposed advanced payment plan proposed by the MEC to the Techman Mac Meeting of October 2010. Correct? Did you do that?

MR MAXATSHWA: My apologies. That is in a meeting of November 2010.

ADV PRETORIUS SC: Yes.

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: So we should change paragraph 97. That was on the one of the 18th of November, is that correct?

MR MAXATSHWA: Yes, that was the one on November, 18th.

ADV PRETORIUS SC: Right. And it was at that meeting or in respect of that meeting that the HOD had tendered his apologies. Mr Zwane was also not there.

MR MAXATSHWA: Yes, Chair.

10 **ADV PRETORIUS SC:** After the meeting... well, at that meeting, you have told the Chair that you were advised that advanced payments as contemplated by the MEC would be unlawful.

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: You have also added during the course of your answers that the representatives of the Gauteng department gave a similar warning.

MR MAXATSHWA: Yes, Chair.

20 **ADV PRETORIUS SC:** After the meeting, did you speak to Mr Mokoena?

MR MAXATSHWA: Yes, Chair. Immediately after the meeting, I called Mr Mokoena.

ADV PRETORIUS SC: Now, or you will recall that this meeting is on the 18th of November and we have not yet received Mr Tsoametsi's memorandum of the

25th of November.

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: So what did you tell Mr Mokoena?

MR MAXATSHWA: I said to Mr Mokoena on the phone, the ERP has not approved. Money is going to be taken from us. The idea of the Advanced Payment System is also discouraged unlawful.

ADV PRETORIUS SC: And did you say who he should speak to about this?

10 **MR MAXATSHWA**: Come again, SC?

ADV PRETORIUS SC: When you spoke to Mr Mokoena, what was your expectation as to who Mr Mokoena would relay your information to?

MR MAXATSHWA: Ja, my expectation was that Mr Mokoena will relay the information to the executing authority which is the MEC.

ADV PRETORIUS SC: Yes.

MR MAXATSHWA: Mr Zwane.

20 **ADV PRETORIUS SC**: In case we are not in... we have not been entirely accurate in our discussions with the witnesses to date on the consequences of the National Department and Treasury's rejection of the expenditure recovery plan.

It seems that national, the National Department of Human Settlements and Treasury were not as it were taking in by the expenditure recovery plan. Is that correct?

MR MAXATSHWA: You mean, they did not buy the idea?

ADV PRETORIUS SC: Yes.

MR MAXATSHWA: Ja, the National Department did not buy the idea.

ADV PRETORIUS SC: And deducted money anyway.

MR MAXATSHWA: Ja, they took R 230 million away from us.

ADV PRETORIUS SC: Leaving over a billion rand still to be spent.

10 **MR MAXATSHWA:** Yes, Chair.

ADV PRETORIUS SC: And I take it, no one had told National or Treasury that, we have heard this evidence, that you had a plan B as it were, the Advanced Payment System?

MR MAXATSHWA: If I may recall, there was a meeting with... at the Provincial Treasury.

ADV PRETORIUS SC: I am talking about National Treasury.

MR MAXATSHWA: No. Yes, I am coming...[intervenes]

ADV PRETORIUS SC: Oh, I am sorry.

20 **MR MAXATSHWA:** There was a meeting with the Provincial Treasury, where Mr Mokoena presented the monitoring of the expenditure. And in that meeting, usually have... they call him the CEO of Provincial Treasury but is the HOD, in essence, of Provincial Treasury.

And because we... the department was in serious trouble, he did not canvas as the HOD of Treasury to say:

Yes, please accompany us to go and see the National Treasury in Pretoria.

A meeting was arranged. I was part of that particular meeting with the HOD, the then CFO, Ms Danny Hattingh and from the National Human Settlement there was an acting Treasurer.

We... and then our provincial, the head of department. To go and talk and report. Mr Mokoena is to report himself to the National Treasury in terms of what is happening. Why
10 the expenditure and the likes.

ADV PRETORIUS SC: Was the proposed solution, the Advanced Payment System discussed at that meeting?

MR MAXATSHWA: It was discussed and the National Treasury said: Look, we are not for the idea.

ADV PRETORIUS SC: Right. So it was discussed. And was it... were they told that you are going ahead anyway with the plan?

MR MAXATSHWA: We returned back to the province and I believe Mr Mokoena had discussions with the MEC. I was
20 not part of that.

ADV PRETORIUS SC: Well, we know that it was decided to go ahead with the plan, nevertheless.

MR MAXATSHWA: Yes, that is what happened.

ADV PRETORIUS SC: Chair, is this a convenient time? We will finish shortly after the lunch adjournment.

CHAIRPERSON: Yes. No, that is fine. Let us take the lunch adjournment and we will resume at two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV PRETORIUS SC: Thank you, Chair. Mr Maxatshwa, can we go to paragraph 104.1 please? On page 208 and 209 you deal with the advance payment system, much of that is on record at the moment and we are really have
10 your confirmation on the affidavit but there are a few questions arising that I would like to put to you.

Who chose the contractors that were to be allocated units to build?

MR MAXATSHWA: It is the MEC.

ADV PRETORIUS SC: Did anyone ever say to the MEC look, you know, that is really our job in the department, you know, it is an operational matter, it is not a matter for an MEC. Was that issue ever raised?

MR MAXATSHWA: Chair, it was supposed to be raised by
20 the HOD.

CHAIRPERSON: But did he raise it?

ADV PRETORIUS SC: Not as far as I know.

MR MAXATSHWA: Well, he gave evidence yesterday, that is the HOD of the time, Mr Mokoena, you know, that there was a practice in the department which had gone for some

time that the MEC, whoever the MEC was at any particular point in time, would be the one who would pick the contractors who should be given contracts. Now you were in the department for a long time, do you know anything about such a practice?

MR MAXATSHWA: When I joined the department in 2009, especially the housing part, projects were already running but in preparation of the 2010/2011 there was a list that was signed off by MEC Mafereka which indicated that he
10 had an input on it and he approved it. Yes.

CHAIRPERSON: That is before Mr Zwane?

MR MAXATSHWA: Yes.

CHAIRPERSON: Yes.

MR MAXATSHWA: Now with Mr Zwane, I saw in Mr Mokhesi's affidavit where he is making reference to NM14, which is the list of the contractors. At the bottom it is the signature of Mr Zwane and the date when it was approved.

CHAIRPERSON: Oh, is that a document that you saw in the bundle here or is that a document that is somewhere
20 else?

MR MAXATSHWA: No, it is in the bundle.

CHAIRPERSON: Oh, okay.

MR MAXATSHWA: Yes as part of the annexures to his affidavit.

CHAIRPERSON: Oh, I did not pick that up.

ADV PRETORIUS SC: We will look at that, perhaps find it in the next few minutes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: You say it is attached to the affidavit of?

MR MAXATSHWA: Of Mr Mokhesi, I think it is NM14.

ADV PRETORIUS SC: Thank you very much. At the time the advance payment system was being implemented - we have been told that there were three sets of contracts.

10 **ADV PRETORIUS SC:** The first was the contract with the contractor and we know what it said about who was responsible for sourcing supplies and paying the supplier in that contract and when the department's obligation to pay the contractor would arise. We understand that.

The second level of contract was the tripartite agreement, the building material, supply agreement which involved the supplier, the contractor and the department, correct?

MR MAXATSHWA: Yes, correct.

20 **ADV PRETORIUS SC:** And the third was the so-called cession agreement where the claim or the payment for supplies was ceded by the contractor to the supplier. Do you recall that contract?

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: And we know, of course, that that

really – that cession was really not a valid or real cession because claim was not in existence at the time that cession was signed. We know that.

MR MAXATSHWA: Correct, Chair.

ADV PRETORIUS SC: But interestingly you say at paragraph 104.3 that all the contracts were signed at the same time.

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: That is even more strange because
10 you are signing a cession agreement and a supply agreement which contradicts the contract agreement and the cession agreement, the cession has not even arisen. Did these anomalies strike anybody?

MR MAXATSHWA: Ja, what happened, Chair, is that before contractors were appointed there were briefing sessions in terms of what is going to be unfolding in terms of the advance payment system.

The MEC led that briefing sessions, they were held district by district, to say to contractors – we met with the
20 contractors first and said to them guys, this is how we are going to move. You will be signed contract, you will be allocated houses, this is how much you have been allocated, each contractor. And then you are going to sign an agreement with the department. Because we are in a rush, you are going to sign a tripartite agreement with us

and a material supplier that will be supplying you with material.

You will go and conduct your own material supply in your own space. For instance, if I was in Welkom, I will go to the Welkom building material supplier, Corobrik or whoever, and say look, give me a quotation, I want to go and sign this particular agreement.

After those briefings, contractors were like screaming to the department to come and sign the first
10 contract that allocates them work, the second contract, tripartite and a cession agreement at the same time for this scheme to happen in any way.

But I must also qualify, Chair, that all those particular instruments, the three instruments were a product of the state legal advisers on the first floor because they had an input into those particular contracts as legal gurus.

Ours was to give them the technical thinking in terms of the quantities that will be there and the technical
20 – what you normally call bill of quantities as to what you need to see in the house and they will draft the contract and bounce them amongst themselves and finalise them because that was the instruction that came from a cabinet to say no projects will happen in the department besides the department bouncing all those particular contracts with

the fourth floor, the fourth floor being the Premier's office in the Free State.

ADV PRETORIUS SC: Well, there is evidence that these contracts did not get there, there is contradictory evidence that this contract did get there, but that is Mr Venter's office.

MR MAXATSHWA: Ja, that is Mr Venter's office.

ADV PRETORIUS SC: Well, there is evidence that these contracts never got to him.

10 **MR MAXATSHWA:** Chairperson, I would like you to go – maybe look at the transcript of our disciplinary hearing, there was somebody that testified, a lady, I happen to have forgotten her name, from the office of Mr Venter who came and testified on those particular contracts.

ADV PRETORIUS SC: Well, we will deal with that evidence but they ought to have gone there for vetting.

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: And any lawyer who looked at this mess of contracts would have concluded that they cannot
20 all sit together and the explanation you have given that there was a briefing session only makes it worse because you have a verbal briefing session explaining one thing and you have three contracts that cannot live together explaining another system. It does not help to have a briefing session where you give a verbal explanation to

contractors and suppliers, how things are going to work and then you have a written signed contract which appears to be completely contradictory and none of these contracts can live with one another. It is just an unacceptable mess, surely?

MR MAXATSHWA: I agree with you, Chairperson.

ADV PRETORIUS SC: Then let us go to paragraphs 105, 6 and 7. Basically, as I understand it, this collection of contracts, the writing, the written contracts are used to
10 justify payments, not the verbal side agreements.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: Paragraph 110, what do you say there? Sorry, perhaps we had better place on record what you say in paragraph 109 because that concerns you and your evidence. Did you ever sign any of the contracts which form part of the advance payment system?

MR MAXATSHWA: No, Chair.

ADV PRETORIUS SC: Did you ever collate all these contracts and place them on the HSS system, the housing
20 subsidy system?

MR MAXATSHWA: No, Chair.

ADV PRETORIUS SC: That is an electronic subsystem is it not?

MR MAXATSHWA: Yes.

ADV PRETORIUS SC: And in fact that system, which was

picked up by the National Treasury or the National Department CFO to learn that advance payments were being made, is it not?

MR MAXATSHWA: That is the system we are referring to.

ADV PRETORIUS SC: And did you ever hand any contracts or invoices to the financial department for processing and payment?

MR MAXATSHWA: No, Chair.

ADV PRETORIUS SC: When did you become aware, as
10 you say in paragraph 110, that despite the fact that these payments were made on this collection, to put it politely, of contracts that materials were in fact never supplied by the time payments were made. What are you saying there?

MR MAXATSHWA: Chair, as you move around in monitoring through your site meetings, sometimes you will see that nothing is happening on site. But this contractor, when you look into the HSS, he has been paid, material supply has been paid, you asked yourself but how is it happening that there is no material, there is no
20 construction on site? As you were sitting in the war room, we were monitoring everybody's performance by simply taking a phone and calling that particular contractor to say what is happening, are you on site?

The contractor will tell you many stories. No, I have not received a material wadda, wadda and the

material supplier has got my money and I am still waiting. Mostly they were complaining Corobrik has not come to us and we are last on the list and stuff like that. Then you know that material has not been supplied and payment has been advanced already.

ADV PRETORIUS SC: You say this information came to the knowledge of the war room whilst the advance payment system was being put into place?

MR MAXATSHWA: Yes, Chair.

10 **ADV PRETORIUS SC:** So it must have been apparent to those officials including senior officials and Mr Zwane that the system was not working.

MR MAXATSHWA: It was because there were reports generated by the war room.

ADV PRETORIUS SC: But then why was it not stopped? I mean, you have a system, you are told it is illegal, you know it is illegal, you nevertheless – and I am talking you in plural not your personally, one has a system, one is told it is illegal, one begins to implement the system, one sees
20 that the system is not working, you are paying money and no houses are being built because there is no delivery of materials, why was it not stopped?

MR MAXATSHWA: Because the MEC believed that it will work.

ADV PRETORIUS SC: But he knew it was not working.

MR MAXATSHWA: He knew it was not working because of the reports.

ADV PRETORIUS SC: On that note let us look at FS14 if you would. Thank you for drawing this to our attention. Perhaps you should come join our team.

MR MAXATSHWA: It will be my pleasure, SC.

ADV PRETORIUS SC: If you look at page 223, what is this document?

CHAIRPERSON: Let me get there first. 223 you said?

10 **ADV PRETORIUS SC:** Yes, Chair.

CHAIRPERSON: Yes, okay, I have got it.

ADV PRETORIUS SC: FS14. What is this document?

MR MAXATSHWA: It is a list of contractors and the allocations and the areas where the contractors were allocated.

ADV PRETORIUS SC: Alright, so there are two elements that are put into this document. One, the identity of the contractors who are going to receive contracts or who have received contracts, correct?

20 **MR MAXATSHWA:** Correct.

ADV PRETORIUS SC: As well as the number of units that they have been allocated to build.

MR MAXATSHWA: Correct, Chair.

ADV PRETORIUS SC: And, of course, the areas from which they come.

MR MAXATSHWA: Correct.

ADV PRETORIUS SC: If you look at page 225 you will see there a signature. Do you recognise that signature?

MR MAXATSHWA: That is the signature of MEC Zwane.

ADV PRETORIUS SC: Right and it is dated the 10 September 2010.

MR MAXATSHWA: Correct, Chair.

CHAIRPERSON: I am sorry. Oh, that is page 225 of bundle FS14, so that is the signature appearing next to the
10 date 10/09/2010.

MR MAXATSHWA: Correct, Chair.

CHAIRPERSON: That is Mr Zwane's signature.

MR MAXATSHWA: Correct, Chair.

CHAIRPERSON: Okay and you know it well?

MR MAXATSHWA: Correct, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Would go to paragraph 116 please?

CHAIRPERSON: Paragraph of page?

ADV PRETORIUS SC: Oh, I am sorry, Chair, back to
20 bundle FS12.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Page 212.

CHAIRPERSON: Okay. Yes.

ADV PRETORIUS SC: You have paragraph 116?

MR MAXATSHWA: Yes, Chair.

ADV PRETORIUS SC: You say in that paragraph:

“According to my recollection the advance payment system was not stopped in February 2011 by Mr Mokoena as accounting officer of the Department of Human Settlements despite a meeting which he, the MEC, Mr Zwane, the Chief Financial Officer of the Free State Province and Mr Tsoametsi had with the National Department.”

Let us begin with the meeting. What meeting are you
10 referring to there?

MR MAXATSHWA: It is the meeting between Minister Sexwale and the MEC and HOD and all those that are reflected there, the CFO and Mr Tsoametsi.

ADV PRETORIUS SC: And were you at that meeting?

MR MAXATSHWA: I was not in that meeting.

ADV PRETORIUS SC: How do you know what happened at that meeting?

MR MAXATSHWA: Mr Mokoena came and briefed us.

ADV PRETORIUS SC: Right, what did he say to you?

20 **MR MAXATSHWA:** Mr Mokoena said Mr Sexwale advised them that the scheme that they were implementing was unlawful and they must stop it.

ADV PRETORIUS SC: Right. Now Mr Mokoena’s evidence is that he in fact took steps to stop it. Do you know anything about that?

MR MAXATSHWA: Chair, there should have been an instruction to the CFO but I do not remember it.

ADV PRETORIUS SC: Alright, do you know whether there was any instruction to the CFO in pursuance of this instruction given by the National Minister?

MR MAXATSHWA: No, Chair.

ADV PRETORIUS SC: Do you know whether payments continued?

MR MAXATSHWA: Yes, Chair, I know because on the HSS
10 system they were still running, those particular payments.

ADV PRETORIUS SC: Well, did you see the evidence of the payments being made?

MR MAXATSHWA: Well ...[intervenes]

ADV PRETORIUS SC: You say it was on the HSS system that payments were being made, what did you see on the HSS system? How did you come to learn of this and what did you do about it?

MR MAXATSHWA: I had the viewing rights of what is happening on the HSS then I will go and view and check
20 what is happening on the HSS.

ADV PRETORIUS SC: Well, do you know whether these payments were made to suppliers in advance?

MR MAXATSHWA: Yes, Chair, I know that payments were made to the suppliers in advance because they will come knocking at my door and say look, we are waiting for your

contractors to come and collect their material, we have been paid.

ADV PRETORIUS SC: So if one wanted to verify your evidence and understand whether the evidence of Mr Mokoena and Mr Mokhesi was correct one could go to the HSS system and see the payments listed there.

MR MAXATSHWA: Exactly, Chair.

ADV PRETORIUS SC: And that would give one enough information to determine that these were indeed advance
10 payment system payments being made after February 2011.

MR MAXATSHWA: Ja, they will be captured by dates.

ADV PRETORIUS SC: Would it be an answer to say well, these payments were made in terms of obligation which had arisen prior to February 2011 when we were just clearing out the system, but we entered into no new agreements after Feb?

MR MAXATSHWA: Chair, that – I will not say precisely it was - information was entered via the new contractual obligations because, I mean, money was spent prior and
20 there was a system overload, people – the information was still being captured as we move along.

ADV PRETORIUS SC: Well, that may be a technical explanation for it or a computer-based information or a database explanation but I do not intend to suggest to you that when a decision is made to stop and an instruction is

given to stop payments that they should not be stopped, the contracts were unlawful, anyway, so there was no reason to continue paying just because an agreement had been signed before February. So I am not suggesting it was but there are two situations that could have arisen here. One – well, let me put it to you this way.

The first is that these were merely the processing of payments agreed to before February, not excusable, in our submissions to the Chair eventually, but nevertheless an
10 explanation, however unsatisfactory.

The other is that even after February new contracts were being entered into for advance payments. Do you know whether that happened?

MR MAXATSHWA: Chair, that will be the point to be investigated because if you capture something by the date, all the documents that you are capturing will have a reflected date when they were signed.

ADV PRETORIUS SC: Alright, okay.

MR MAXATSHWA: Yes.

20 **ADV PRETORIUS SC:** So that information into which category it falls would be available on the HSS system.

MR MAXATSHWA: Ja, you will have the HSS system reflecting the dates, then you will go to those payment advices and the supporting documents to determine exactly when the document was signed and submitted because

there will also be a stamp on them.

ADV PRETORIUS SC: Right. Well, we will have to look at that. Thank you for that. I just want to put to you FS12 at page 450, if you would go there, please. This is the statement of Mr Bertus Venter, the legal adviser who lives on the fourth floor, as you mentioned. Correct?

MR MAXATSHWA: FS12?

ADV PRETORIUS SC: Page 450.

MR MAXATSHWA: 450. Chair, I do not have – oh, 450.

10 My apologies, Chair, I was looking at FS14, sorry.

ADV PRETORIUS SC: If you could go to 450, it is that bundle, please.

MR MAXATSHWA: I am at 450.

ADV PRETORIUS SC: Right, this is a page from the affidavit presented to the Commission by Mr Venter who is a legal adviser in the Office of the Premier Free State, is that correct? Well, I am ...[intervenes]

MR MAXATSHWA: I am only seeing it now, Chair.

20 **ADV PRETORIUS SC:** Yes, well you can accept what I am saying, you can trust me on that.

MR MAXATSHWA: Thank you, Chair, I am taking your word, SC.

ADV PRETORIUS SC: Thank you, I want to put to you what is in paragraph 7. If you take issue with that you can check whether it is actually his affidavit or not but in

paragraph 7 on page 450 of FS12 Mr Venter says the following. He says and I quote:

“Neither me nor any of the other state law advisers in the office of the Premier was involved in any of the processes when the initial transfer of money to building materials suppliers took place. No one in the office of the Premier provided a legal opinion on the issue of the initial transfer of the money to the building material suppliers and we were never
10 requested to do so. I have no idea why the state law advisers in the office of the Premier was...”

I read it as it is.

“...was not involved by the Department of Human Settlements.”

Now I understand it would not have been your responsibility to make sure that this was done but were you aware of a requirement that the Premier actually put in place that contracts should actually be submitted to the office of the Premier, legal advisers?

20 **MR MAXATSHWA:** Yes, Chair, I was aware. There was a letter written by the former DG of the Free State Government, Dr [indistinct] 29.08 to all HODs instructing them to go this route of bouncing all the contract legal documents with the state law advisers.

ADV PRETORIUS SC: And if that directive was not

obeyed and deliberately not obeyed, it was a serious omission, you would agree with that?

MR MAXATSHWA: Chair, as I have mentioned, in terms of my recollection, the lady that came from the state law advisers to come and testify during our disciplinary hearing came because we were questioning their involvement on all those legal instruments. They will not even have come to a disciplinary hearing if they were not involved

ADV PRETORIUS SC: Well we can look at the transcript
10 of the disciplinary hearing and make the necessary submissions or deal with it in later evidence, but it is not matters directly within your knowledge, although it seriously affected the outcome of your disciplinary hearing.

MR MAXATSHWA: Yes Chair.

ADV PRETORIUS SC: Is there anything else Mr Maxatshwa that we have not dealt with that you would like to tell the Chair about, in relation to the matters we have dealt with today?

MR MAXATSHWA: Yes Chair. If granted an opportunity
20 Chair my first issue will be to call for your assistance in terms of finalisation of our disciplinary hearing. This matter has taken toll on I am not saying – sorry Chair.

CHAIRPERSON: Yes, you want to drink water.

MR MAXATSHWA: Chair when we began this road seven years ago, there were six of us, selectively charged

unfairly. In the process of travelling this road and trying to get justice we lost one of our colleagues. Maybe when you read the transcript you will hear the name, you will come across the name of Vushi Magotsi [?]. He unfortunately succumbed to depression and the pressures of this whole exercise of us getting purged by those that have powers to do so on our lives.

Even today as we sit, we still getting that unfair treatment, not to finalise this matter as speedily as we can
10 so that we can move on with our lives. From my own experience I have tried several times to get work, but the mere fact that there is this thing hanging on your career you won't get anywhere.

So we are pleading with the Commission to if they can, if the Commission can assist us.

We are also pleading with the Commission Chair that necessary documents to exercise our rights be
20 availed. I have mentioned when we started that we never had a clue of Open Waters Report or Preliminary Report as purported in Mr Mokhesi's affidavit, why were we charged. If you needed an answer to various questions that he had about anything in the department we had to explain to him, we will not even run away.

I understand from his affidavit that we never came to assist him. The very same day he decided to suspend

us, the Friday he gave us the letters, which gagged us not to talk to anyone unless he takes his phone or he writes to us to say so and so will come and consult with you, give him a hearing. We were never contacted, he never attended as a person that believed that there were wrongdoings, he never even attended the disciplinary hearing. Junior officials were sent there to go and understand what is happening, who had note what was happening.

10 Even during the road we said we are still here, can we sit down and amicably settle this particular matter, because now we have realised after six years down the line that he has submitted his affidavit in trying to recover the man and he clearly identifies who is responsible for design approval of the system that was there, which means wait a bietjie, time to see that we are not in the wrong, as to Mr Mokoena if you look at the transcript what he said in his affidavit this week that was submitted to the Commission is total contradiction of what he said during the disciplinary
20 hearing. He totally denied responsibility of the system, whereas documents are there, he approved the implementation of the system, the memo, he also instructed and participated in the war room and the Chief Accounting Officer of the department he could not spread the accounting to all of us, we will be there to assist him

and to say, point him in the right direction, no this cannot be done, this cannot be done, but the responsibility to make a final decision rest with him in terms of all the legislative framework.

Chair I saw which other colleagues came here with our matter having been solved so that I can place all the documents and the decision reached by the forum that we are in now, which is the CCMA, it was – the entire process has cost us even our pensions are over now, we are owing
10 our lawyers on the labour matter. We cannot even move
Chair.

CHAIRPERSON: Are you represented by lawyers in your CCMA matter?

MR MAXATSHWA: Yes.

CHAIRPERSON: What is the explanation they give you for the matter to take so long, is the CCMA's an organisation that is required to deal with disputes expeditiously and you are supposed to refer your dismissal dispute to the CCMA within 30 days of your dismissal because it is looked at as
20 some matter that should be dealt with expeditiously. Now if you talk about six years, seven years, eight years of such a matter not being finalised, especially when you talk of the matter not even having reached the stage of oral evidence it seems just too long. Sometimes these matters can take as long as this in circumstances where there has

been a trial, there has been an arbitration but whoever has lost in the arbitration has taken the matter on review and there are appeals to various courts. Sometimes the appeals go up to the Constitutional Court so it takes, it can take a long time, a number of years when it is that situation but you said that the matter has not even reached a point where oral evidence has been led and that does make the delay very, very long to me.

10 What explanation do they give you, your own lawyers because they are supposed to know, they are the ones who are supposed to pressurise the CCMA, to allocate the matter a date. What explanation do they give you when you say what's holding things back?

ADV PRETORIUS SC: Firstly it was the appointment of Commissioners. You will get a Commissioner appointed on a matter, but seeing the vastness of the evidence that he must deal with he will then say no I am not take this particular case, that is on the brink, on the brink of you hearing the matter you are going to sit down on the matter, 20 there will be a recusal of the Commissioner. I think we had if I am not mistaken three or four of such incidences. The last incident that we had Chair was when we reached an agreement with the employer party to say now that you are reviewing the scheme which you should have done and declared it unlawful before you charged us, can we wait for

the matter to be finalised and it took forever for the matter to be finalised. And then we came back and said no this is not working for us, can we now go back to the CCMA and say let us continue and then we continue. This one commissioner came there; it was during November he says hey your matter is too complicated. We asked him look take all the documents, the evidence that has been collected because I mean going back to call again all the witnesses, taking 33 days or 50 day is going to cost us
10 money and it is going to cost the employer money. Some of the witnesses aren't even there. Mr ...[indistinct] passed away, Ms Figi Magaza passed away so if we need to use those particular individuals how are we going to cross the river.

After three months he came back and said I want to hear the matter afresh.

CHAIRPERSON: Ja, well I suspect there may be a lot of things that may have happened which led to the matter being wherever it is now.

20 Since you are represented by lawyers I think that the first thing would be to get a proper explanation from the lawyers, have they given you anything in writing that sets out exactly what has been happened over the past seven/eight years, all these pages?

MR MAXATSHWA: Yes Chair we ...[intervenes]

CHAIRPERSON: There is such a document?

MR MAXATSHWA: There is such a document.

CHAIRPERSON: Have you got it here by any chance?

MR MAXATSHWA: No Chair.

CHAIRPERSON: It is at home?

MR MAXATSHWA: It is at home, we can avail it to the Commission.

CHAIRPERSON: Ja, you see if you are represented by lawyers I am not sure that the Commission could not do
10 much but I leave that to Mr Pretorius and his team but again it is not the job of the Commission but it might not harm to find out what is happening.

ADV PRETORIUS SC: Certainly Chair, the matter should be referred to the head office of the CCMA, where arrangements can be made for special appointments.

CHAIRPERSON: Yes, for example I would have expected that your lawyers if they were unhappy with the Provincial leadership of the CCMA in expediting the matter I would have expected them to escalate your concerns to the
20 National Office of the CCMA, but I speak without knowing, maybe they have done all of those things, so I think I will leave the matter on the basis that you will talk to Mr Pretorius and he will make his judgment call about what if anything the team can do about.

ADV PRETORIUS SC: Yes, there is a second issue that

may be relevant to the Commission's work and that is whether there is any link between the officials in the Free State and the delays in the CCMA, it may be worth investigating.

CHAIRPERSON: Ja, ja. The last thing I wanted to say Mr Maxatshwa in regard to this matter is that it is quite concerning that a lot of money that had been set aside for the purposes of building houses for people seems to have ended up in various – in the hands of various suppliers and
10 maybe contractors, more than R500million I think I was told by Mr Moketsi and yet no houses were built in regard to that particular allocation for that financial year, 2010 to 2011 and the money should have benefitted ordinary people, they should have got house but they didn't get any houses and yet government had set aside a huge amount of money, R1.3billion, it is very concerning, because a government is there to ensure that the people get the services they need.

Now it is not just this matter where I am hearing
20 this kind of evidence, where a lot of money has been set aside for things to be done that would benefit people but the money ends up with other people and the people who are supposed to have benefitted from that money or what was to be used, what that money was to be used for do not get anything.

Within the context of the Free State I heard a few weeks ago evidence relating to what we have termed the asbestos project where the documents that were issued by the Department of Human Settlements, same department, indicated that they were giving a contract to a certain joint venture in order to ultimately remove asbestos from the roofs of various houses because it is dangerous and so on. I heard evidence that the job could have been done with R21million but the Provincial Government gave this particular joint venture about R250million for a R21million job.

On the evidence I have heard so far there is very little, if any work that the joint venture did, it just got sub-contractors, actually the second – the first sub-contractor also did not do any job, only the third sub-contractor did the job. The joint venture and the first sub-contractor just pocketed the money but to make it worse there was no removal of asbestos from the roofs of the houses of people. There was simply the counting of houses that happened.

Leave that aside. I have heard evidence about what has been referred to as the Vrede Dairy Farm, the Estina Project, that is well known. A project that was meant to be benefit a lot of black farmers, people who wanted to do farming to earn a living, there too the people

who were supposed to be beneficiaries, to benefit from that project I heard evidence that they never got anything and yet millions and millions and grants were paid out by the government, Free State Provincial Government, and that money ended in the hands of other people and the real people who were supposed to benefit did not get anything. It is very concerning.

This does not necessarily mean the Free State Provincial Government was the worst, because we have not
10 had evidence from other provinces and how other Provincial Governments worked and we will not because that kind of job needs years to do, so we will not know but my own thinking is that if one went around the provinces one would find a lot of projects where money that was supposed to benefit ordinary people ends up in the pockets of some people and the ordinary people gets nothing. It is very worrying.

So I am just mentioning that, that as I hear all of this evidence here is something that troubles me quite a
20 lot, because the people who were supposed to be taken care of end up receiving no benefits and yet their money because it is taxpayers money, gets paid to other people.

I just – Mr Maxatshwa you might not be able to say anything and I am not inviting you to say anything, I am just saying that it is most frustrating to hear what I hear in

this Commission and there seems to be no indications that it is slowing down, instead it looks like there's some people who say they don't care, they will also get their fair share.

We will call you if we need you again Mr Maxatshwa, thank you very much for coming to give evidence. You are now excused.

MR MAXATSHWA: Thank you Chair.

CHAIRPERSON: Mr Pretorius, is that the end of, the last of your witnesses for today?

10 **ADV PRETORIUS SC:** Yes Chair, and we will resume, by your leave, ten o'clock on Friday.

CHAIRPERSON: Okay and who is your witness, or who are your witnesses on Friday?

ADV PRETORIUS SC: Well that's a matter still to be finally determined but the very least Mr Zwane will be present.

CHAIRPERSON: Yes, okay. We are going to adjourn for the day and we will resume on Friday at ten o'clock.

We adjourn.

20 **REGISTRAR:** All rise.

INQUIRY ADJOURNS TO 25 SEPTEMBER 2020